

SENATE BILL NO. 313

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services

on _____)

(Patron Prior to Substitute--Senator Ebbin)

A BILL to allow certain pharmaceutical processors and industrial hemp processors to sell cannabis products at retail; sunset.

Be it enacted by the General Assembly of Virginia:

1. § 1. That, notwithstanding any other provision of law, any pharmaceutical processor that holds a permit pursuant to § 54.1-3442.6 of the Code of Virginia and any industrial hemp processor, subject to the provisions of § 6, registered with the Commissioner of Agriculture and Consumer Services pursuant to Chapter 41.1 (§ 3.2-4112 et seq.) of Title 3.2 of the Code of Virginia shall be authorized to sell cannabis products as defined in § 54.1-3408.3 of the Code of Virginia to unregistered persons who are 21 years of age or older without the need for a written certification. The Board of Directors of the Virginia Cannabis Control Authority (the Board) shall adopt, by January 1, 2023, and enforce regulations governing sales and related activities conducted pursuant to this act that shall model, to the greatest extent practicable, the regulations of the Board of Pharmacy governing pharmaceutical processors set forth in 18VAC110-60 of the Virginia Administrative Code, subject to the following exceptions and requirements:

1. Part II (18VAC110-60-30 et seq.) of 18VAC110-60 and 18VAC110-60-310 of the Virginia Administrative Code shall not apply;

2. Pharmaceutical processors and industrial hemp processors engaging in sales pursuant to the provisions of this act shall:

a. Sell cannabis products only in opaque, child-resistant, tamper-evident, and resealable packaging;

b. Report quarterly to the Board data regarding all sales conducted pursuant to this act, including information regarding violations, errors, and omissions;

26 c. Be permitted to cultivate in no more than 80,000 square feet of canopy the number of cannabis
27 plants, as determined by the pharmaceutical processor or industrial hemp processor, necessary to serve
28 the demand for sales created by this act;

29 d. In the case of pharmaceutical processors, dedicate a sufficient number of registers at each facility
30 to registered patient sales and maintain sufficient inventory of cannabis products to satisfy the demands
31 of such patients;

32 e. Submit to the Board and, upon approval by the Board, comply with a diversity, equity, and
33 inclusion plan describing how the pharmaceutical processor or industrial hemp processor will, in its health
34 service area or other area determined by the Board, (i) educate consumers about responsible consumption
35 of cannabis products and (ii) incubate five qualified social equity applicant retailers for a period of six
36 months or support and educate qualified social equity applicants that wish to participate in the cannabis
37 market; and

38 f. Pay a one-time \$1 million fee to the Department of Taxation prior to engaging in sales pursuant
39 to this act;

40 3. Pharmaceutical processors and industrial hemp processors engaging in sales pursuant to the
41 provisions of this act shall not:

42 a. In the case of pharmaceutical processors, deliver cannabis products or sell cannabis products at
43 any location other than the pharmaceutical processor and cannabis dispensing facilities for which the
44 pharmaceutical processor holds a permit pursuant to § 54.1-3442.6 of the Code of Virginia;

45 b. In the case of industrial hemp processors, deliver cannabis products or sell cannabis products at
46 any location other than the industrial hemp processing facility for which the industrial hemp processor is
47 registered with the Commissioner of Agriculture and Consumer Services pursuant to Chapter 41.1 (§ 3.2-
48 4112 et seq.) of Title 3.2 of the Code of Virginia and up to five additional retail locations, as determined
49 by the Board;

50 c. Advertise cannabis products to persons younger than 21 years of age;

51 d. Sell to a person in a single transaction more than (i) one ounce of botanical cannabis products,
52 (ii) five grams of cannabis concentrate products, or (iii) a quantity of infused cannabis products that
53 contains more than 500 milligrams of tetrahydrocannabinol;

54 e. Sell any nonbotanical cannabis product with an individual unit dose containing more than 10
55 milligrams of tetrahydrocannabinol;

56 f. Be required to comply with any Board regulation, requirement, or restriction that does not model,
57 to the greatest extent practicable, the regulations of the Board of Pharmacy or exceptions thereto set forth
58 in this act unless such regulation, requirement, or restriction is adopted by the General Assembly; or

59 g. Be subject to administrative action, liability, or other penalty based on the acts or omissions of
60 any independent cannabis retailer; and

61 4. Unregistered persons without a written certification shall be permitted to access pharmaceutical
62 processor and dispensing facilities and industrial hemp processor facilities and retail locations for the
63 purpose of purchasing cannabis products in accordance with the provisions of this act.

64 For the purposes of this act, "canopy" means any area dedicated to live marijuana plant cultivation,
65 including areas in which plants are grown, propagated, cloned, or maintained. If any such areas are stacked
66 vertically, each level of space shall be measured and included in the total canopy square footage.

67 § 2. The Board of Directors of the Virginia Cannabis Control Authority may suspend the privileges
68 of a pharmaceutical processor or industrial hemp processor to engage in sales under this act for substantial
69 and repeated violations of the provisions of this act.

70 § 3. A tax of 21 percent shall be levied on the sale of cannabis products by pharmaceutical
71 processors or industrial hemp processors pursuant to this act, which shall be in addition to any tax imposed
72 under Chapter 6 (§ 58.1-600 et seq.) of Title 58.1 of the Code of Virginia or any other provision of federal,
73 state, or local law. Pharmaceutical processors and industrial hemp processors shall remit such tax to the
74 Department of Taxation. The Department of Taxation shall deposit tax revenues from the 21 percent excise
75 tax, as well as the fees received from pharmaceutical processors and industrial hemp processors pursuant
76 to § 1, into the account of the Virginia Cannabis Control Authority to be used to provide loans to qualified
77 social equity applicants who are in need of capital for the start-up of a licensed cannabis business.

78 Any locality may by ordinance levy a three percent tax on the sale of cannabis products by
79 pharmaceutical processors or industrial hemp processors pursuant to this act. Such local tax shall be in
80 addition to any local sales tax imposed under Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, any food and
81 beverage tax imposed under Article 7.1 (§ 58.1-3833 et seq.) of Chapter 38 of Title 58.1, and any excise
82 tax imposed on meals under § 58.1-3840. If a town imposes a tax under this section, any tax imposed by
83 its surrounding county under this section shall not apply within the limits of the town. Nothing in this
84 section shall be construed to prohibit a locality from imposing any tax authorized by law on a person or
85 property regulated under this act. Any locality that enacts an ordinance pursuant to this section shall,
86 within 30 days, notify the Virginia Cannabis Control Authority and any pharmaceutical processor or
87 industrial hemp processor in such locality of the ordinance's enactment. The ordinance shall take effect
88 on the first day of the second month following its enactment. Any local tax levied under this section shall
89 be remitted and disbursed to the Virginia Cannabis Control Authority in the same manner as the 21 percent
90 state excise tax and, thereafter, disbursed to the applicable locality.

91 § 4. The Board of Directors of the Virginia Cannabis Control Authority and the Department of
92 Taxation may assess and collect fees from each pharmaceutical processor and industrial hemp processor
93 that sells cannabis products pursuant to this act in an amount sufficient to recover the costs associated with
94 the implementation of the provisions of this act.

95 § 5. The provisions of this act shall not apply to or otherwise affect the sale of cannabis products
96 to registered patients with written certifications by pharmaceutical processors pursuant to Article 4.2 (§
97 54.1-3442.5 et seq. of the Code of Virginia) of the Drug Control Act.

98 § 6. The Board of Directors of the Virginia Cannabis Control Authority shall determine which
99 industrial hemp processors shall be permitted to conduct sales and related activities pursuant to the
100 provisions of this act and develop criteria for making such determinations. Such criteria shall comply with
101 the following: (i) no more than five industrial hemp processors shall be permitted to conduct sales and
102 related activities pursuant to the provisions of this act; (ii) an industrial hemp processor may not conduct
103 sales and related activities pursuant to the provisions of this act unless the industrial hemp processor was
104 registered with the Commissioner of Agriculture and Consumer Services pursuant to Chapter 41.1 (§ 3.2-

105 4112 et seq.) of Title 3.2 of the Code of Virginia prior to March 31, 2021; and (iii) the industrial hemp
106 processor has processed no less than 40,000 pounds of hemp.

107 § 7. No agent or employee of a pharmaceutical processor, cannabis dispensing facility, or industrial
108 hemp processor shall be prosecuted under Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1 or § 18.2-248, 18.2-
109 248.1, or 18.2-250 of the Code of Virginia for possession or manufacture of marijuana or for possession,
110 manufacture, or distribution of cannabis products, subject to any civil penalty, denied any right or
111 privilege, or subject to any disciplinary action by a professional licensing board if such agent or employee
112 (i) possessed or manufactured such marijuana for the purposes of producing cannabis products in
113 accordance with the provisions of this act or (ii) possessed, manufactured, or distributed such cannabis
114 products that are consistent with generally accepted cannabis industry standards in accordance with the
115 provisions of this act.

116 § 8. The Board of Directors of the Virginia Cannabis Control Authority's (the Board) initial
117 adoption of regulations necessary to implement the provisions of this act shall be exempt from the
118 Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), except that the Board shall
119 provide an opportunity for public comment on the regulations prior to adoption.

120 § 9. That the provisions of this act shall become effective on January 1, 2023.

121 § 10. That the provisions of this act shall expire when pharmaceutical processors and industrial
122 hemp processors engaging in the sale of cannabis products pursuant to the provisions of this act are
123 authorized by the Virginia Cannabis Control Authority to apply for and be granted licenses to cultivate,
124 manufacture, wholesale, and sell at retail to consumers 21 years of age or older retail marijuana and retail
125 marijuana products at, in the case of pharmaceutical processors, the pharmaceutical processor and
126 cannabis dispensing facilities for which the pharmaceutical processor holds a permit pursuant to § 54.1-
127 3442.6 of the Code of Virginia or, in the case of industrial hemp processors, at the industrial hemp
128 processing facility for which the industrial hemp processor is registered with the Commissioner of
129 Agriculture and Consumer Services pursuant to Chapter 41.1 (§ 3.2-4112 et seq.) of Title 3.2 of the Code
130 of Virginia and any additional retail locations approved by the Board of Directors of the Virginia Cannabis
131 Control Authority.

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