

SENATE BILL NO. 1393

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services

on January 27, 2023)

(Patron Prior to Substitute--Senator Lewis)

A BILL to amend and reenact §§ 3.2-4112 and 3.2-4114 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 3.2-4114.3 through 3.2-4114.6, relating to hemp products; license and label requirements; civil penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-4112 and 3.2-4114 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 3.2-4114.3 through 3.2-4114.6 as follows:

§ 3.2-4112. Definitions.

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

"Cannabis sativa product" means a product made from any part of the plant Cannabis sativa with a concentration of tetrahydrocannabinol that is greater than that allowed by federal law.

"Deal" means to temporarily possess industrial hemp grown in compliance with state or federal law that (i) has not been processed and (ii) was not grown and will not be processed by the person temporarily possessing it.

"Dealer" means any person who is registered pursuant to subsection A of § 3.2-4115 to deal in industrial hemp. "Dealer" does not include a retail establishment that sells or offers for sale a hemp product.

"Dealership" means the location at which a dealer stores or intends to store the industrial hemp in which he deals.

"Federally licensed hemp producer" means a person who holds a hemp producer license issued by the U.S. Department of Agriculture pursuant to 7 C.F.R. Part 990.

"Grow" means to plant, cultivate, or harvest a plant or crop.

27 "Grower" means any person registered pursuant to subsection A of § 3.2-4115 to grow industrial
28 hemp.

29 "Hemp product" means a product, including any raw materials from industrial hemp that are used
30 for or added to a food or beverage product, that contains industrial hemp and has completed all stages of
31 processing needed for the product.

32 "Industrial hemp" means any part of the plant *Cannabis sativa*, including seeds, extracts, salts,
33 isomers, and derivatives thereof, whether growing or not, with a concentration of tetrahydrocannabinol
34 that is no greater than that allowed by federal law. "Industrial hemp" includes an industrial hemp extract
35 that has not completed all stages of processing needed to convert the extract into a hemp product.

36 "Industrial hemp intended for inhalation" means industrial hemp or a hemp product that (i) is
37 grown and produced in compliance with all applicable laws, (ii) has a concentration of
38 tetrahydrocannabinol that is no greater than that allowed for hemp by federal law, and (iii) is intended for
39 inhalation.

40 "Process" means to convert industrial hemp into a hemp product.

41 "Processor" means a person registered pursuant to subsection A of § 3.2-4115 to process industrial
42 hemp.

43 "Process site" means the location at which a processor processes or intends to process industrial
44 hemp.

45 "Production field" means the land or area on which a grower or a federally licensed hemp producer
46 is growing or intends to grow industrial hemp.

47 **§ 3.2-4114. Regulations.**

48 A. The Board may adopt regulations pursuant to this chapter as necessary to register persons to
49 grow, deal in, or process industrial hemp or implement the provisions of this chapter.

50 B. Upon publication by the U.S. Department of Agriculture in the Federal Register of any final
51 rule regarding industrial hemp that materially expands opportunities for growing, producing, or dealing in
52 industrial hemp in the Commonwealth, the Board shall immediately adopt amendments conforming

53 Department regulations to such federal final rule. Such adoption of regulations by the Board shall be
54 exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

55 C. The Board shall, as it relates to industrial hemp and industrial hemp extracts intended for
56 inhalation, adopt regulations relating to the following:

57 1. Identification of contaminants of industrial hemp intended for inhalation and establishing
58 tolerances for such contaminants; and

59 2. Batch testing requirements for industrial hemp intended for inhalation. The Board shall require
60 that batch testing of industrial hemp intended for inhalation be conducted by an independent testing
61 laboratory that meets criteria established by the Board.

62 D. With the exception of § 2.2-4031, neither the provisions of the Administrative Process Act (§
63 2.2-4000 et seq.) nor public participation guidelines adopted pursuant thereto shall apply to the adoption
64 of any regulation pursuant to subsection C. Prior to adopting any regulation pursuant to subsection C, the
65 Board shall publish a notice of opportunity to comment in the Virginia Register of Regulations and post
66 the action on the Virginia Regulatory Town Hall. Such notice of opportunity to comment shall contain (i)
67 a summary of the proposed regulation; (ii) the text of the proposed regulation; and (iii) the name, address,
68 and telephone number of the agency contact person responsible for receiving public comments. Such
69 notice shall be made at least 60 days in advance of the last date prescribed in such notice for submittals of
70 public comment. The legislative review provisions of subsections A and B of § 2.2-4014 shall apply to
71 the promulgation or final adoption process for regulations pursuant to subsection C. The Board shall
72 consider and keep on file all public comments received for any regulation adopted pursuant to subsection
73 C.

74 **§ 3.2-4114.3. Hemp products; license.**

75 A. Any manufacturer of a hemp product, wholesale supplier that sells hemp products, or retail
76 establishment that sells hemp products shall register with the Board for a license to sell such products and
77 shall pay an annual fee for such license. Such license fee shall be in an amount set by the Board and shall
78 vary commensurate with sales volume.

79 **§ 3.2-4114.4. Product packaging, labeling, and testing.**

80 A. No person shall offer for sale or sell industrial hemp intended for inhalation unless the product
81 is:

82 1. Equipped with a label that states, in English and in a font no less than 1/16 of an inch, (i) all
83 ingredients contained in the substance; (ii) the amount of such substance that constitutes a single serving;
84 (iii) the total percentage and milligrams of all tetrahydrocannabinols included in the substance and the
85 total number of milligrams of all tetrahydrocannabinols that are contained in each serving; (iv) if the
86 substance contains tetrahydrocannabinol, that the product may not be sold to persons younger than 21
87 years of age; (v) a batch number and expiration date; (vi) the telephone number of the manufacturer and
88 the location where the product was manufactured; (vii) a direct link to the specific, original batch testing
89 results and certificate of analysis; and (viii) the following warning: "This product has not been evaluated
90 by the Food and Drug Administration. This product is not intended to treat, cure, or prevent any disease.
91 Keep away from children. Consult your physician before use if you are pregnant, nursing, or have a
92 medical condition. National Poison Control Hotline: 1-800-222-1222."; and

93 2. Accompanied by a certificate of analysis, produced by an independent laboratory that is
94 accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization by a
95 third-party accrediting body, that states the total tetrahydrocannabinol concentration of the substance or
96 the total tetrahydrocannabinol concentration of the batch from which the substance originates. The
97 certificate of accreditation pursuant to standard ISO/IEC 17025 issued by the third-party accrediting body
98 to the independent laboratory shall be available for review at the location at which the industrial hemp
99 intended for inhalation is offered for sale or sold.

100 This subsection shall not (i) apply to products that are approved for marketing by the U.S. Food
101 and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed
102 to prohibit any conduct permitted under Article 4.2 (§ 54.1-3442.5 et seq.) of Chapter 34 of Title 54.1.

103 B. No person shall offer for sale or sell industrial hemp intended for inhalation that, without
104 authorization, bears, is packaged in a container or wrapper that bears, or is otherwise labeled to bear the
105 trademark, trade name, famous mark as defined in 15 U.S.C. § 1125, or other identifying mark, imprint,
106 or device, or any likeness thereof, of a manufacturer, processor, packer, or distributor of a product intended

107 for human consumption other than the manufacturer, processor, packer, or distributor that did in fact so
108 manufacture, process, pack, or distribute such substance.

109 C. All industrial hemp intended for inhalation and industrial hemp extract, as defined in § 3.2-
110 5145.1, offered for sale or sold shall be contained in child-resistant packaging, as defined in § 4.1-600.

111 **§ 3.2-4114.5. Sale of industrial hemp intended for inhalation to minor prohibited; civil**
112 **penalty.**

113 A. No person shall sell or offer for sale to a person younger than 21 years of age industrial hemp
114 intended for inhalation.

115 B. Any person that violates the provisions of subsection A is, in addition to any other penalties
116 provided by law, subject to a civil penalty not to exceed \$5,000 for a first violation, a civil penalty not to
117 exceed \$10,000 and a seven-day registration suspension for a second violation, and a civil penalty not to
118 exceed \$25,000 and a permanent registration revocation for a third violation. Civil penalties collected
119 pursuant to this section shall be collected by the Commissioner and the proceeds shall be payable to the
120 State Treasurer for remittance to the Department.

121 C. This section shall not (i) apply to products that are approved for marketing by the U.S. Food
122 and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed
123 to prohibit any conduct permitted under Article 4.2 of Chapter 34 of Title 54.1 of the Code of Virginia;

124 **§ 3.2-4114.6. Application of chapter.**

125 All industrial hemp intended for inhalation and any person who sells or offers for sale such product
126 shall be subject to the provisions of this chapter and regulations adopted pursuant to this chapter.

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