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HOUSE BILL NO. 974

Offered January 10, 2018

Prefiled January 9, 2018

A *BILL to amend and reenact §§ 18.2-250.1, 18.2-251.1, 18.2-258.1, 54.1-3408.3, and 54.1-3442.5 through 54.1-3442.8 of the Code of Virginia, relating to medical marijuana; written certification.*

Patron—Guzman

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-250.1, 18.2-251.1, 18.2-258.1, 54.1-3408.3, and 54.1-3442.5 through 54.1-3442.8 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-250.1. Possession of marijuana unlawful.

A. It is unlawful for any person knowingly or intentionally to possess marijuana unless the substance was obtained directly from, or pursuant to, a valid prescription or order of, *or written certification issued pursuant to § 54.1-3408.3 by*, a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Drug Control Act (§ 54.1-3400 et seq.).

Upon the prosecution of a person for violation of this section, ownership or occupancy of the premises or vehicle upon or in which marijuana was found shall not create a presumption that such person either knowingly or intentionally possessed such marijuana.

Any person who violates this section is guilty of a misdemeanor and shall be confined in jail not more than 30 days and fined not more than \$500, either or both; any person, upon a second or subsequent conviction of a violation of this section, is guilty of a Class 1 misdemeanor.

B. The provisions of this section shall not apply to members of state, federal, county, city, or town law-enforcement agencies, jail officers, or correctional officers, as defined in § 53.1-1, certified as handlers of dogs trained in the detection of controlled substances when possession of marijuana is necessary for the performance of their duties.

~~C. In any prosecution under this section involving marijuana in the form of cannabidiol oil or THC-A oil as those terms are defined in § 54.1-3408.3, it shall be an affirmative defense that the individual possessed such oil pursuant to a valid written certification issued by a practitioner in the course of his professional practice pursuant to § 54.1-3408.3 for treatment or to alleviate the symptoms of (i) the individual's intractable epilepsy or (ii) if such individual is the parent or legal guardian of a minor or of an incapacitated adult as defined in § 18.2-369, such minor's or incapacitated adult's intractable epilepsy. If the individual files the valid written certification with the court at least 10 days prior to trial and causes a copy of such written certification to be delivered to the attorney for the Commonwealth, such written certification shall be prima facie evidence that such oil was possessed pursuant to a valid written certification.~~

§ 18.2-251.1. Possession or distribution of marijuana for medical purposes permitted.

A. No person shall be prosecuted under § 18.2-250 or § 18.2-250.1 for the possession of marijuana or tetrahydrocannabinol when that possession occurs pursuant to a valid prescription issued by a medical doctor in the course of his professional practice *or valid written certification issued pursuant to § 54.1-3408.3 for the treatment of any medical condition deemed terminal or debilitating by a licensed health care professional, pain management, cancer or, glaucoma, intractable epilepsy, human immunodeficiency virus, osteoporosis, or arthritis.*

B. No medical doctor shall be prosecuted under § 18.2-248 or § 18.2-248.1 for dispensing or distributing marijuana or tetrahydrocannabinol for medical purposes when such action occurs in the course of his professional practice for treatment of *any medical condition deemed terminal or debilitating by a licensed health care professional, pain management, cancer or, glaucoma, intractable epilepsy, human immunodeficiency virus, osteoporosis, or arthritis.*

C. No pharmacist shall be prosecuted under §§ 18.2-248 ~~to~~ *through* 18.2-248.1 for dispensing or distributing marijuana or tetrahydrocannabinol to any person who holds a valid prescription of a medical doctor *or valid written certification issued pursuant to § 54.1-3408.3* for such substance issued in the course of such doctor's professional practice for treatment of *any medical condition deemed terminal or debilitating by a licensed health care professional, pain management, cancer or, glaucoma, intractable epilepsy, human immunodeficiency virus, osteoporosis, or arthritis.*

§ 18.2-258.1. Obtaining drugs, procuring administration of controlled substances, etc., by fraud, deceit or forgery.

A. ~~It shall be~~ *is* unlawful for any person to obtain or attempt to obtain any drug or procure or

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59 attempt to procure the administration of any controlled substance or marijuana: (i) by fraud, deceit,
60 misrepresentation, embezzlement, or subterfuge; (ii) by the forgery or alteration of a prescription ~~or of~~
61 ~~any~~, written order, *or written certification issued pursuant to § 54.1-3408.3*; (iii) by the concealment of a
62 material fact; or (iv) by the use of a false name or the giving of a false address.

63 B. It ~~shall be~~ *is* unlawful for any person to furnish false or fraudulent information in or omit any
64 information from, or willfully make a false statement in, any prescription, order, report, record, *written*
65 *certification issued pursuant to § 54.1-3408.3*, or other document required by Chapter 34 (§ 54.1-3400 et
66 seq.) of Title 54.1.

67 C. It ~~shall be~~ *is* unlawful for any person to use in the course of the manufacture or distribution of a
68 controlled substance or marijuana a license number which is fictitious, revoked, suspended, or issued to
69 another person.

70 D. It ~~shall be~~ *is* unlawful for any person, for the purpose of obtaining any controlled substance or
71 marijuana to falsely assume the title of, or represent himself to be, a manufacturer, wholesaler,
72 pharmacist, physician, dentist, veterinarian, or other authorized person.

73 E. It ~~shall be~~ *is* unlawful for any person to make or utter any false or forged prescription ~~or false or~~
74 ~~forged~~, written order, *or written certification issued pursuant to § 54.1-3408.3*.

75 F. It ~~shall be~~ *is* unlawful for any person to affix any false or forged label to a package or receptacle
76 containing any controlled substance.

77 G. This section shall not apply to officers and employees of the United States, of this
78 Commonwealth or of a political subdivision of this Commonwealth acting in the course of their
79 employment, who obtain such drugs for investigative, research, or analytical purposes, or to the agents
80 or duly authorized representatives of any pharmaceutical manufacturer who obtain such drugs for
81 investigative, research, or analytical purposes and who are acting in the course of their employment,
82 provided that such manufacturer is licensed under the provisions of the Federal Food, Drug and
83 Cosmetic Act; and provided further, that such pharmaceutical manufacturer, *and* its agents and duly
84 authorized representatives file with the Board such information as the Board may deem appropriate.

85 H. Except as otherwise provided in this subsection, any person who ~~shall violate~~ *violates* any
86 provision herein ~~shall be~~ *is* guilty of a Class 6 felony.

87 Whenever any person who has not previously been convicted of any offense under this article or
88 under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant,
89 depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of
90 such an offense dismissed, or reduced as provided in this section, pleads guilty to or enters a plea of not
91 guilty to the court for violating this section, upon such plea if the facts found by the court would justify
92 a finding of guilt, the court may place him on probation upon terms and conditions.

93 As a term or condition, the court shall require the accused to be evaluated and enter a treatment
94 and/or education program, if available, such as, in the opinion of the court, may be best suited to the
95 needs of the accused. This program may be located in the judicial circuit in which the charge is brought
96 or in any other judicial circuit as the court may provide. The services shall be provided by a program
97 certified or licensed by the Department of Behavioral Health and Developmental Services. The court
98 shall require the person entering such program under the provisions of this section to pay all or part of
99 the costs of the program, including the costs of the screening, evaluation, testing, and education, based
100 upon the person's ability to pay unless the person is determined by the court to be indigent.

101 As a condition of supervised probation, the court shall require the accused to remain drug free during
102 the period of probation and submit to such tests during that period as may be necessary and appropriate
103 to determine if the accused is drug free. Such testing may be conducted by the personnel of any
104 screening, evaluation, and education program to which the person is referred or by the supervising
105 agency.

106 Unless the accused was fingerprinted at the time of arrest, the court shall order the accused to report
107 to the original arresting law-enforcement agency to submit to fingerprinting.

108 Upon violation of a term or condition, the court may enter an adjudication of guilt upon the felony
109 and proceed as otherwise provided. Upon fulfillment of the terms and conditions of probation, the court
110 shall find the defendant guilty of a Class 1 misdemeanor.

111 § 54.1-3408.3. Certification for use of marijuana.

112 A. As used in this section,

113 "Cannabidiol oil" means a processed Cannabis plant extract that contains at least 15 percent
114 cannabidiol but no more than five percent tetrahydrocannabinol, or a dilution of the resin of the
115 Cannabis plant that contains at least 50 milligrams of cannabidiol per milliliter but not more than five
116 percent tetrahydrocannabinol.

117 "Practitioner" "practitioner" means a practitioner of medicine or osteopathy licensed by the Board of
118 Medicine who is a neurologist or who specializes in the treatment of epilepsy.

119 "THC-A oil" means a processed Cannabis plant extract that contains at least 15 percent
120 tetrahydrocannabinol acid but not more than five percent tetrahydrocannabinol, or a dilution of the resin

of the Cannabis plant that contains at least 50 milligrams of tetrahydrocannabinol acid per milliliter but not more than five percent tetrahydrocannabinol.

B. A practitioner in the course of his professional practice may issue a written certification for the use of ~~cannabidiol oil or THC-A oil~~ *marijuana* for the treatment or to alleviate the symptoms of a ~~patient's any medical condition deemed terminal or debilitating by a licensed health care professional,~~ *pain management, cancer, glaucoma, intractable epilepsy, human immunodeficiency virus, osteoporosis, or arthritis.*

C. The written certification shall be on a form provided by the Office of the Executive Secretary of the Supreme Court developed in consultation with the Board of Medicine. Such written certification shall contain the name, address, and telephone number of the practitioner, the name and address of the patient issued the written certification, the date on which the written certification was made, and the signature of the practitioner. Such written certification issued pursuant to subsection B shall expire no later than one year after its issuance unless the practitioner provides in such written certification an earlier expiration.

D. No practitioner shall be prosecuted under § 18.2-248 or 18.2-248.1 for dispensing or distributing ~~cannabidiol oil or THC-A oil~~ *marijuana* for the treatment or to alleviate the symptoms of a patient's intractable epilepsy pursuant to a written certification issued pursuant to subsection B. Nothing in this section shall preclude the Board of Medicine from sanctioning a practitioner for failing to properly evaluate or treat a patient's medical condition or otherwise violating the applicable standard of care for evaluating or treating medical conditions.

E. A practitioner who issues a written certification to a patient pursuant to this section shall register with the Board. The Board shall, in consultation with the Board of Medicine, set a limit on the number of patients to whom a practitioner may issue a written certification.

F. A patient who has been issued a written certification shall register with the Board or, if such patient is a minor or an incapacitated adult as defined in § 18.2-369, a patient's parent or legal guardian shall register and shall register such patient with the Board.

G. The Board shall promulgate regulations to implement the registration process. Such regulations shall include (i) a mechanism for sufficiently identifying the practitioner issuing the written certification, the patient being treated by the practitioner, and, if such patient is a minor or an incapacitated adult as defined in § 18.2-369, the patient's parent or legal guardian; (ii) a process for ensuring that any changes in the information are reported in an appropriate timeframe; and (iii) a prohibition for the patient to be issued a written certification by more than one practitioner during any given time period.

H. Information obtained under the registration process shall be confidential and shall not be subject to the disclosure provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). However, reasonable access to registry information shall be provided to (i) the Chairmen of the House and Senate Committees for Courts of Justice, (ii) state and federal agencies or local law enforcement for the purpose of investigating or prosecuting a specific individual for a specific violation of law, (iii) licensed physicians or pharmacists for the purpose of providing patient care and drug therapy management and monitoring of drugs obtained by a registered patient, (iv) a pharmaceutical processor involved in the treatment of a registered patient, or (v) a registered patient or, if such patient is a minor or an incapacitated adult as defined in § 18.2-369, the patient's parent or legal guardian, but only with respect to information related to such registered patient.

Article 4.2.

Permitting of Pharmaceutical Processors to Produce and Dispense ~~Cannabidiol Oil and THC-A Oil~~ *Marijuana*.

§ 54.1-3442.5. Definitions.

As used in this article:

"~~Cannabidiol oil~~" has the same meaning as specified in § 54.1-3408.3.

"Pharmaceutical processor" means a facility that (i) has obtained a permit from the Board pursuant to § 54.1-3408.3 and (ii) cultivates Cannabis plants intended only for the production of ~~cannabidiol oil or THC-A oil~~ *marijuana* for use in the treatment of certain medical conditions, produces ~~cannabidiol oil or THC-A oil~~ *marijuana* for use in the treatment of certain medical conditions, and dispenses ~~cannabidiol oil or THC-A oil~~ *marijuana* for use in the treatment of certain medical conditions to a registered patient or, if such patient is a minor or an incapacitated adult as defined in § 18.2-369, such patient's parent or legal guardian for the treatment of *any medical condition deemed terminal or debilitating by a licensed health care professional, pain management, cancer, glaucoma, intractable epilepsy, human immunodeficiency virus, osteoporosis, or arthritis.*

"Practitioner" has the same meaning as specified in § 54.1-3408.3.

"~~THC-A oil~~" has the same meaning as specified in § 54.1-3408.3.

§ 54.1-3442.6. Permit to operate pharmaceutical processor.

A. No person shall operate a pharmaceutical processor without first obtaining a permit from the

Board. The application for such permit shall be made on a form provided by the Board and signed by a pharmacist who will be in full and actual charge of the pharmaceutical processor. The Board shall establish an application fee and other general requirements for such application.

B. Each permit shall expire annually on a date determined by the Board in regulation. The number of permits that the Board may issue or renew in any year is limited to one for each health service area established by the Board of Health. Permits shall be displayed in a conspicuous place on the premises of the pharmaceutical processor.

C. The Board shall adopt regulations establishing health, safety, and security requirements for pharmaceutical processors. Such regulations shall include requirements for (i) physical standards; (ii) location restrictions; (iii) security systems and controls; (iv) minimum equipment and resources; (v) recordkeeping; (vi) labeling and packaging; (vii) quarterly inspections; (viii) processes for safely and securely cultivating Cannabis plants intended for producing ~~cannabidiol oil and THC-A oil~~ *marijuana for use in the treatment of certain medical conditions*, producing ~~cannabidiol oil and THC-A oil~~ *marijuana for use in the treatment of certain medical conditions*, and dispensing and delivering in person ~~cannabidiol oil and THC-A oil~~ *marijuana for use in the treatment of certain medical conditions* to a registered patient or, if such patient is a minor or an incapacitated adult as defined in § 18.2-369, such patient's parent or legal guardian; (ix) a maximum number of marijuana plants a pharmaceutical processor may possess at any one time; and (x) the secure disposal of plant remains.

D. Every pharmaceutical processor shall be under the personal supervision of a licensed pharmacist on the premises of the pharmaceutical processor.

E. No person who has been convicted of a felony or of any offense in violation of Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2 shall be employed by or act as an agent of a pharmaceutical processor.

§ 54.1-3442.7. Dispensing marijuana; report.

A. A pharmaceutical processor shall dispense or deliver ~~cannabidiol oil or THC-A oil~~ *marijuana* only in person to (i) a patient who is a Virginia resident, has been issued a valid written certification, and is registered with the Board pursuant to § 54.1-3408.3 or (ii) if such patient is a minor or an incapacitated adult as defined in § 18.2-369, such patient's parent or legal guardian who is a Virginia resident and is registered with the Board pursuant to § 54.1-3408.3. Prior to dispensing, the pharmaceutical processor shall verify that the practitioner issuing the written certification, the patient, and, if such patient is a minor or an incapacitated adult, the patient's parent or legal guardian are registered with the Board. No pharmaceutical processor shall dispense more than a 30-day supply for any patient during any 30-day period. The Board shall establish in regulation an amount of ~~cannabidiol oil or THC-A oil~~ *marijuana* that constitutes a 30-day supply to ~~treat or alleviate the symptoms of a patient's intractable epilepsy.~~

B. A pharmaceutical processor shall dispense only ~~cannabidiol oil and THC-A oil~~ *marijuana* that has been cultivated and produced on the premises of such pharmaceutical processor.

C. The Board shall report annually by December 1 to the Chairmen of the House and Senate Committees for Courts of Justice on the operation of pharmaceutical processors issued a permit by the Board, including the number of practitioners, patients, and parents or legal guardians of patients who have registered with the Board and the number of written certifications issued pursuant to § 54.1-3408.3.

§ 54.1-3442.8. Criminal liability; exceptions.

In any prosecution of an ~~No~~ agent or employee of a pharmaceutical processor ~~shall be prosecuted~~ under § 18.2-248, 18.2-248.1, 18.2-250, or 18.2-250.1 for ~~possession or manufacture of marijuana or for possession, manufacture, or distribution of~~ ~~cannabidiol oil or THC-A oil~~, it shall be an affirmative defense that ~~marijuana~~ if such agent or employee (i) possessed or manufactured such ~~marijuana~~ for the purposes of producing ~~cannabidiol oil or THC-A oil~~ in accordance with the provisions of this article and Board regulations or (ii) possessed, manufactured, or distributed such ~~cannabidiol oil or THC-A oil~~ *marijuana* in accordance with the provisions of this article and Board regulations. If such agent or employee files a copy of the permit issued to the pharmaceutical processor pursuant to § 54.1-3442.6 with the court at least 10 days prior to trial and causes a copy of such permit to be delivered to the attorney for the Commonwealth, such permit shall be prima facie evidence that (a) such ~~marijuana~~ was possessed or manufactured for the purposes of producing ~~cannabidiol oil or THC-A oil~~ in accordance with the provisions of this article and Board regulations or (b) such ~~cannabidiol oil or THC-A oil~~ was possessed, manufactured, or distributed in accordance with the provisions of this article and Board regulations.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 836 of the Acts of Assembly of 2017 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.