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SENATE BILL NO. 726

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on January 25, 2018)

(Patron Prior to Substitute—Senator Dunnivant [SB 795])

A BILL to amend and reenact §§ 18.2-250.1, 54.1-3408.3, 54.1-3442.5, and 54.1-3442.7 of the Code of Virginia, relating to certification for use of cannabidiol oil or THC-A oil.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-250.1, 54.1-3408.3, 54.1-3442.5, and 54.1-3442.7 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 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 diagnosed condition or disease 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 diagnosed condition or disease. 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.

§ 54.1-3408.3. Certification for use of cannabidiol oil or THC-A oil for treatment.

A. As used in this section:

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

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

"THC-A oil" means a processed Cannabis plant extract that contains at least 15 percent tetrahydrocannabinol acid but not more than five percent tetrahydrocannabinol, or a dilution of the resin of the Cannabis plant that contains at least 50 five 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 for treatment or to alleviate the symptoms of a patient's intractable epilepsy any diagnosed condition or disease determined by the practitioner to benefit from such use.

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 for the treatment or to alleviate the symptoms of a patient's intractable

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60 *epilepsy diagnosed condition or disease* pursuant to a written certification issued pursuant to subsection
61 B. Nothing in this section shall preclude the Board of Medicine from sanctioning a practitioner for
62 failing to properly evaluate or treat a patient's medical condition or otherwise violating the applicable
63 standard of care for evaluating or treating medical conditions.

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

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

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

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

86 **§ 54.1-3442.5. Definitions.**

87 As used in this article:

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

89 "Pharmaceutical processor" means a facility that (i) has obtained a permit from the Board pursuant to
90 § 54.1-3408.3 and (ii) cultivates Cannabis plants intended only for the production of cannabidiol oil or
91 THC-A oil, produces cannabidiol oil or THC-A oil, and dispenses cannabidiol oil or THC-A oil to a
92 registered patient or, if such patient is a minor or an incapacitated adult as defined in § 18.2-369, such
93 patient's parent or legal guardian for the treatment of intractable epilepsy.

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

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

96 **§ 54.1-3442.7. Dispensing cannabidiol oil and THC-A oil; report.**

97 A. A pharmaceutical processor shall dispense or deliver cannabidiol oil or THC-A oil only in person
98 to (i) a patient who is a Virginia resident, has been issued a valid written certification, and is registered
99 with the Board pursuant to § 54.1-3408.3 or (ii) if such patient is a minor or an incapacitated adult as
100 defined in § 18.2-369, such patient's parent or legal guardian who is a Virginia resident and is registered
101 with the Board pursuant to § 54.1-3408.3. Prior to dispensing, the pharmaceutical processor shall verify
102 that the practitioner issuing the written certification, the patient, and, if such patient is a minor or an
103 incapacitated adult, the patient's parent or legal guardian are registered with the Board. No
104 pharmaceutical processor shall dispense more than a ~~30-day~~ 90-day supply for any patient during any
105 ~~30-day~~ 90-day period. The Board shall establish in regulation an amount of cannabidiol oil or THC-A
106 oil that constitutes a ~~30-day~~ 90-day supply to treat or alleviate the symptoms of a patient's ~~intractable~~
107 *epilepsy diagnosed condition or disease*.

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

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