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SENATE BILL NO. 918

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on January 28, 2020)

(Patrons Prior to Substitute—Senators Marsden and Ruff [SB 827])

A *BILL to amend the Code of Virginia by adding in Chapter 41.1 of Title 3.2 a section numbered 3.2-4121 and by adding in Chapter 51 of Title 3.2 an article numbered 5, consisting of sections numbered 3.2-5145.1 through 3.2-5145.5, relating to industrial hemp; standards for extracts; regulations; fund; emergency.*

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 41.1 of Title 3.2 a section numbered 3.2-4121 and by adding in Chapter 51 of Title 3.2 an article numbered 5, consisting of sections numbered 3.2-5145.1 through 3.2-5145.5, as follows:

§ 3.2-4121. Virginia Industrial Hemp Fund

There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Industrial Hemp Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys levied and collected under the provisions of this chapter shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used by the Department solely for carrying out the purposes of this chapter. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner.

Article 5.

Industrial Hemp Extract Intended for Human Consumption.

§ 3.2-5145.1. Definitions.

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

"Food" means any article that is intended for human consumption and introduction into commerce, whether the article is simple, mixed, or compound, and all substances or ingredients used in the preparation thereof. "Food" does not mean drug as defined in § 54.1-3401.

"Industrial hemp extract" means an extract (i) of a Cannabis sativa plant that has a concentration of tetrahydrocannabinol that is no greater than that allowed for hemp by federal law and (ii) that is intended for human consumption.

§ 3.2-5145.2. Industrial hemp extract; approved food.

An industrial hemp extract is a food and is subject to the requirements of this chapter and regulations adopted pursuant to this chapter.

§ 3.2-5145.3. Manufacturer of industrial hemp extract or food containing an industrial hemp extract.

A manufacturer of an industrial hemp extract or food containing an industrial hemp extract shall be an approved source if the manufacturer operates:

1. Under inspection by the responsible food regulatory agency in the location in which such manufacturing occurs; and

2. In compliance with the laws, regulations, or criteria that pertain to the manufacturer of industrial hemp extracts or food containing an industrial hemp extract in the location in which such manufacturing occurs.

§ 3.2-5145.4. Industrial hemp extract requirements.

A. An industrial hemp extract shall (i) be produced from industrial hemp grown in compliance with applicable law and (ii) notwithstanding any authority under federal law to have a greater concentration of tetrahydrocannabinol, have a tetrahydrocannabinol concentration of no greater than 0.3 percent.

B. In addition to the requirements of this chapter, an industrial hemp extract or food containing an industrial hemp extract shall comply with regulations adopted by the Board pursuant to § 3.2-5145.5.

§ 3.2-5145.5. Regulations.

A. The Board is authorized to adopt regulations for the efficient enforcement of this article.

B. The Board shall adopt regulations identifying contaminants of an industrial hemp extract or a food containing an industrial hemp extract and establishing tolerances for such identified contaminants.

C. The Board shall adopt regulations establishing labeling requirements for an industrial hemp extract or a food containing an industrial hemp extract.

D. The Board shall adopt regulations establishing batch testing requirements for industrial hemp extracts. The Board shall require that batch testing of industrial hemp extracts be conducted by an

60 *independent testing laboratory that meets criteria established by the Board.*

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

73 **2. That the Secretary of Agriculture and Forestry, in consultation with the Secretary of**
74 **Administration, shall by November 1, 2020, report to the Governor and the General Assembly a**
75 **plan for the long-term sustainability of funding for the industrial hemp program, including**
76 **consideration of the cost of testing the tetrahydrocannabinol concentration of hemp crops grown in**
77 **Virginia as required by state or federal law.**

78 **3. That the Department of Agriculture and Consumer Services shall, by November 1, 2020, report**
79 **to the Chairmen of the Senate Committee on Agriculture, Conservation and Natural Resources**
80 **and the House Committee on Agriculture, Chesapeake and Natural Resources regarding**
81 **recommended legislative or regulatory amendments necessary to (i) allow a registered industrial**
82 **hemp grower to grow industrial hemp with a tetrahydrocannabinol concentration of no greater**
83 **than one percent and (ii) authorize the Department to modify its existing industrial hemp program**
84 **as quickly and efficiently as possible to respond to any final regulation adopted by the U.S.**
85 **Department of Agriculture regarding the domestic production of hemp.**

86 **4. That nothing in this act shall be construed to prohibit the Department of Agriculture and**
87 **Consumer Services from adopting a tiered approach to testing of tetrahydrocannabinol**
88 **concentrations at the processor level if such approach is not prohibited by federal law or by any**
89 **rule or regulation of the U.S. Department of Agriculture.**

90 **5. That an emergency exists and this act is in force from its passage.**