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HOUSE BILL NO. 1922

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend and reenact § 18.2-247 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-248.1:01, relating to delta-8 tetrahydrocannabinol; distribution; penalty.

Patron—McGuire

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-247 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-248.1:01 as follows:

§ 18.2-247. Use of terms "controlled substances," "marijuana," "Schedules I, II, III, IV, V, and VI," "imitation controlled substance" and "counterfeit controlled substance" in Title 18.2.

A. Wherever the terms "controlled substances" and "Schedules I, II, III, IV, V, and VI" are used in Title 18.2, such terms refer to those terms as they are used or defined in the Drug Control Act (§ 54.1-3400 et seq.).

B. The term "imitation controlled substance" when used in this article means (i) a counterfeit controlled substance or (ii) a pill, capsule, tablet, or substance in any form whatsoever which is not a controlled substance subject to abuse, and:

1. Which by overall dosage unit appearance, including color, shape, size, marking and packaging or by representations made, would cause the likelihood that such a pill, capsule, tablet, or substance in any other form whatsoever will be mistaken for a controlled substance unless such substance was introduced into commerce prior to the initial introduction into commerce of the controlled substance which it is alleged to imitate; or

2. Which by express or implied representations purports to act like a controlled substance as a stimulant or depressant of the central nervous system and which is not commonly used or recognized for use in that particular formulation for any purpose other than for such stimulant or depressant effect, unless marketed, promoted, or sold as permitted by the U.S. Food and Drug Administration.

C. In determining whether a pill, capsule, tablet, or substance in any other form whatsoever, is an "imitation controlled substance," there shall be considered, in addition to all other relevant factors, comparisons with accepted methods of marketing for legitimate nonprescription drugs for medicinal purposes rather than for drug abuse or any similar nonmedicinal use, including consideration of the packaging of the drug and its appearance in overall finished dosage form, promotional materials or representations, oral or written, concerning the drug, and the methods of distribution of the drug and where and how it is sold to the public.

D. The term "marijuana" when used in this article means any part of a plant of the genus *Cannabis*, whether growing or not, its seeds or resin; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, its resin, or any extract containing one or more cannabinoids. Marijuana does not include the mature stalks of such plant, fiber produced from such stalk, oil or cake made from the seed of such plant, unless such stalks, fiber, oil or cake is combined with other parts of plants of the genus *Cannabis*. Marijuana does not include (i) industrial hemp, as defined in § 3.2-4112, that is possessed by a person registered pursuant to subsection A of § 3.2-4115 or his agent; (ii) industrial hemp, as defined in § 3.2-4112, that is possessed by a person who holds a hemp producer license issued by the U.S. Department of Agriculture pursuant to 7 C.F.R. Part 990; or (iii) a hemp product, as defined in § 3.2-4112, containing a tetrahydrocannabinol concentration of no greater than 0.3 percent that is derived from industrial hemp, as defined in § 3.2-4112, that is grown, dealt, or processed in compliance with state or federal law.

E. The term "counterfeit controlled substance" means a controlled substance that, without authorization, bears, is packaged in a container or wrapper that bears, or is otherwise labeled to bear, the trademark, trade name, or other identifying mark, imprint or device or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the manufacturer, processor, packer, or distributor who did in fact so manufacture, process, pack or distribute such drug.

F. The Department of Forensic Science shall determine the proper methods for detecting the concentration of ~~delta-9-tetrahydrocannabinol~~ *tetrahydrocannabinol* (THC) in substances for the purposes of this title and §§ 54.1-3401 and 54.1-3446. The testing methodology shall use post-decarboxylation testing or other equivalent method and shall consider the potential conversion of

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59 ~~delta-9-tetrahydrocannabinol~~ *tetrahydrocannabinolic* acid (THC-A) into THC. The test result shall
60 include the total available THC derived from the sum of the THC and THC-A content.

61 ***§ 18.2-248.1:01. Sale, gift, distribution, or possession with intent to sell, give, or distribute delta-8***
62 ***tetrahydrocannabinol; penalty.***

63 *A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it is unlawful for any person*
64 *to sell, give, distribute, or possess with intent to sell, give, or distribute delta-8 tetrahydrocannabinol.*

65 *B. Any person who violates this section is guilty of a Class 1 misdemeanor.*