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## 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.

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

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

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

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

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

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

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

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

**§ 3.2-4114. Regulations.**

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

B. Upon publication by the U.S. Department of Agriculture in the Federal Register of any final rule regarding industrial hemp that materially expands opportunities for growing, producing, or dealing in industrial hemp in the Commonwealth, the Board shall immediately adopt amendments conforming Department regulations to such federal final rule. Such adoption of regulations by the Board shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

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

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

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  
64 adoption of any regulation pursuant to subsection C. Prior to adopting any regulation pursuant to  
65 subsection C, the Board shall publish a notice of opportunity to comment in the Virginia Register of  
66 Regulations and post the action on the Virginia Regulatory Town Hall. Such notice of opportunity to  
67 comment shall contain (i) a summary of the proposed regulation; (ii) the text of the proposed  
68 regulation; and (iii) the name, address, and telephone number of the agency contact person responsible  
69 for receiving public comments. Such notice shall be made at least 60 days in advance of the last date  
70 prescribed in such notice for submittals of public comment. The legislative review provisions of  
71 subsections A and B of § 2.2-4014 shall apply to the promulgation or final adoption process for  
72 regulations pursuant to subsection C. The Board shall consider and keep on file all public comments  
73 received for any regulation adopted pursuant to subsection 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  
77 and shall pay an annual fee for such license. Such license fee shall be in an amount set by the Board  
78 and shall 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  
84 serving; (iii) the total percentage and milligrams of all tetrahydrocannabinols included in the substance  
85 and the total number of milligrams of all tetrahydrocannabinols that are contained in each serving; (iv)  
86 if the substance contains tetrahydrocannabinol, that the product may not be sold to persons younger  
87 than 21 years of age; (v) a batch number and expiration date; (vi) the telephone number of the  
88 manufacturer and the location where the product was manufactured; (vii) a direct link to the specific,  
89 original batch testing results and certificate of analysis; and (viii) the following warning: "This product  
90 has not been evaluated by the Food and Drug Administration. This product is not intended to treat,  
91 cure, or prevent any disease. Keep away from children. Consult your physician before use if you are  
92 pregnant, nursing, or have a medical condition. National Poison Control Hotline: 1-800-222-1222.";   
93 and

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

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

104 B. No person shall offer for sale or sell industrial hemp intended for inhalation that, without  
105 authorization, bears, is packaged in a container or wrapper that bears, or is otherwise labeled to bear  
106 the trademark, trade name, famous mark as defined in 15 U.S.C. § 1125, or other identifying mark,  
107 imprint, or device, or any likeness thereof, of a manufacturer, processor, packer, or distributor of a  
108 product intended for human consumption other than the manufacturer, processor, packer, or distributor  
109 that did in fact so manufacture, process, pack, or distribute such substance.

110 C. All industrial hemp intended for inhalation and industrial hemp extract, as defined in  
111 § 3.2-5145.1, offered for sale or sold shall be contained in child-resistant packaging, as defined in  
112 § 4.1-600.

113 **§ 3.2-4114.5. Sale of industrial hemp intended for inhalation to minor prohibited; civil penalty.**

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

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

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

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

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

2. That, on July 1, 2024, (i) the power and duty of the Department of Agriculture and Consumer Services, the Board of Agriculture and Consumer Services, and the Commissioner of Agriculture and Consumer Services to implement and enforce the provisions of § 3.2-4114 of the Code of Virginia, as amended by this act, and §§ 3.2-4114.3 through 3.2-4114.6 of the Code of Virginia, as created by this act, shall transfer to the Virginia Cannabis Control Authority and (ii) the Virginia Code Commission shall move the provisions set forth in clause (i) and any applicable definitions to Subtitle II (§ 4.1-600 et seq.) of Title 4.1 of the Code of Virginia.