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SENATE BILL NO. 597

Offered January 10, 2018

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A BILL to amend and reenact §§ 18.2-250.1, 54.1-3408.3, 54.1-3444.2.5, and 54.1-3442.7 of the Code of Virginia, relating to possession or distribution of marijuana for medical purposes; exceptions.

Patron—Vogel

Referred to Committee for Courts of Justice

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, *cancer, glaucoma, human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, Alzheimer's disease, nail patella, cachexia or wasting syndrome, multiple sclerosis, or complex regional pain syndrome* 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, *cancer, glaucoma, human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, Alzheimer's disease, nail patella, cachexia or wasting syndrome, multiple sclerosis, or complex regional pain syndrome*. 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 to treat intractable epilepsy.

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 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 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, *cancer, glaucoma, human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, Alzheimer's disease, nail patella, cachexia or*

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59 *wasting syndrome, multiple sclerosis, or complex regional pain syndrome.*

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

67 D. No practitioner shall be prosecuted under § 18.2-248 or 18.2-248.1 for dispensing or distributing
68 cannabidiol oil or THC-A oil for the treatment or to alleviate the symptoms of a patient's intractable
69 epilepsy, *cancer, glaucoma, human immunodeficiency virus, acquired immune deficiency syndrome,*
70 *hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, Alzheimer's disease, nail patella, cachexia or*
71 *wasting syndrome, multiple sclerosis, or complex regional pain syndrome* pursuant to a written
72 certification issued pursuant to subsection B. Nothing in this section shall preclude the Board of
73 Medicine from sanctioning a practitioner for failing to properly evaluate or treat a patient's medical
74 condition or otherwise violating the applicable standard of care for evaluating or treating medical
75 conditions.

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

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

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

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

98 **§ 54.1-3442.5. Definitions.**

99 As used in this article:

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

101 "Pharmaceutical processor" means a facility that (i) has obtained a permit from the Board pursuant to
102 § 54.1-3408.3 and (ii) cultivates Cannabis plants intended only for the production of cannabidiol oil or
103 THC-A oil, produces cannabidiol oil or THC-A oil, and dispenses cannabidiol oil or THC-A oil to a
104 registered patient or, if such patient is a minor or an incapacitated adult as defined in § 18.2-369, such
105 patient's parent or legal guardian for the treatment of intractable epilepsy, *cancer, glaucoma, human*
106 *immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral*
107 *sclerosis, Crohn's disease, Alzheimer's disease, nail patella, cachexia or wasting syndrome, multiple*
108 *sclerosis, or complex regional pain syndrome.*

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

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

111 **§ 54.1-3442.7. Dispensing cannabidiol oil and THC-A oil; report.**

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

121 constitutes a 30-day supply to treat or alleviate the symptoms of a patient's intractable epilepsy, *cancer,*
122 *glaucoma, human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C,*
123 *amyotrophic lateral sclerosis, Crohn's disease, Alzheimer's disease, nail patella, cachexia or wasting*
124 *syndrome, multiple sclerosis, or complex regional pain syndrome.*

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

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