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SENATE BILL NO. 313

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Morrissey
on February 14, 2022)

(Patrons Prior to Substitute—Senators Ebbin and Dunnavant [SB 621])

A *BILL to allow certain pharmaceutical processors and industrial hemp processors to sell cannabis products at retail; sunset.*

Be it enacted by the General Assembly of Virginia:

1. § 1. *That, notwithstanding any other provision of law, any pharmaceutical processor that holds a permit pursuant to § 54.1-3442.6 of the Code of Virginia and any industrial hemp processor, subject to the provisions of § 6, registered with the Commissioner of Agriculture and Consumer Services pursuant to Chapter 41.1 (§ 3.2-4112 et seq.) of Title 3.2 of the Code of Virginia shall be authorized to sell cannabis products as defined in § 54.1-3408.3 of the Code of Virginia to unregistered persons who are 21 years of age or older without the need for a written certification. The Board of Directors of the Virginia Cannabis Control Authority (the Board) shall adopt, by January 1, 2023, and enforce regulations governing sales and related activities conducted pursuant to this act that shall model, to the greatest extent practicable, the regulations of the Board of Pharmacy governing pharmaceutical processors set forth in 18VAC110-60 of the Virginia Administrative Code, subject to the following exceptions and requirements:*

1. *Part II (18VAC110-60-30 et seq.) of 18VAC110-60 and 18VAC110-60-310 of the Virginia Administrative Code shall not apply;*

2. *Pharmaceutical processors and industrial hemp processors engaging in sales pursuant to the provisions of this act shall:*

- a. Sell cannabis products only in opaque, child-resistant, tamper-evident, and resealable packaging;*
- b. Report quarterly to the Board data regarding all sales conducted pursuant to this act, including information regarding violations, errors, and omissions;*
- c. Be permitted to cultivate the number of cannabis plants, as determined by the pharmaceutical processor or industrial hemp processor, necessary to serve the demand for sales created by this act;*
- d. In the case of pharmaceutical processors, dedicate a sufficient number of registers at each facility to registered patient sales and maintain sufficient inventory of cannabis products to satisfy the demands of such patients;*

e. Submit to the Board and, upon approval by the Board, comply with a plan describing how the pharmaceutical processor or industrial hemp processor will, in its health service area or other area determined by the Board, (i) educate consumers about responsible consumption of cannabis products and (ii) incubate no more than five independent cannabis retailers for a period of six months or support and educate persons that wish to participate in the cannabis market; and

f. Pay a one-time \$1 million fee to the Department of Taxation prior to engaging in sales pursuant to this act;

3. *Pharmaceutical processors and industrial hemp processors engaging in sales pursuant to the provisions of this act shall not:*

a. In the case of pharmaceutical processors, deliver cannabis products or sell cannabis products at any location other than the pharmaceutical processor and cannabis dispensing facilities for which the pharmaceutical processor holds a permit pursuant to § 54.1-3442.6 of the Code of Virginia;

b. In the case of industrial hemp processors, deliver cannabis products or sell cannabis products at any location other than the industrial hemp processing facility for which the industrial hemp processor is registered with the Commissioner of Agriculture and Consumer Services pursuant to Chapter 41.1 (§ 3.2-4112 et seq.) of Title 3.2 of the Code of Virginia and up to five additional retail locations, as determined by the Board;

c. Advertise cannabis products to persons younger than 21 years of age;

d. Sell to a person in a single transaction more than (i) one ounce of botanical cannabis products, (ii) five grams of cannabis concentrate products, or (iii) a quantity of infused cannabis products that contains more than 500 milligrams of tetrahydrocannabinol;

e. Sell any nonbotanical cannabis product with an individual unit dose containing more than 10 milligrams of tetrahydrocannabinol;

f. Be required to comply with any Board regulation, requirement, or restriction that does not model, to the greatest extent practicable, the regulations of the Board of Pharmacy or exceptions thereto set forth in this act unless such regulation, requirement, or restriction is adopted by the General Assembly; or

g. Be subject to administrative action, liability, or other penalty based on the acts or omissions of

60 any independent cannabis retailer; and

61 4. Unregistered persons without a written certification shall be permitted to access pharmaceutical
62 processor and dispensing facilities and industrial hemp processor facilities and retail locations for the
63 purpose of purchasing cannabis products in accordance with the provisions of this act.

64 § 2. The Board of Directors of the Virginia Cannabis Control Authority may suspend the privileges
65 of a pharmaceutical processor or industrial hemp processor to engage in sales under this act for
66 substantial and repeated violations of the provisions of this act.

67 § 3. A tax of 21 percent shall be levied on the sale of cannabis products by pharmaceutical
68 processors or industrial hemp processors pursuant to this act, which shall be in addition to any tax
69 imposed under Chapter 6 (§ 58.1-600 et seq.) of Title 58.1 of the Code of Virginia or any other
70 provision of federal, state, or local law. Pharmaceutical processors and industrial hemp processors shall
71 remit such tax to the Department of Taxation. The Department of Taxation shall deposit tax revenues
72 from the 21 percent excise tax, as well as the fees received from pharmaceutical processors and
73 industrial hemp processors pursuant to § 1, into the account of the Virginia Cannabis Control Authority
74 to be used to assist independent cannabis retailers located in rural and urban opportunity zones
75 designated by the Board of Directors of the Virginia Cannabis Control Authority.

76 § 4. The Board of Directors of the Virginia Cannabis Control Authority and the Department of
77 Taxation may assess and collect fees from each pharmaceutical processor and industrial hemp processor
78 that sells cannabis products pursuant to this act in an amount sufficient to recover the costs associated
79 with the implementation of the provisions of this act.

80 § 5. The provisions of this act shall not apply to or otherwise affect the sale of cannabis products to
81 registered patients with written certifications by pharmaceutical processors pursuant to Article 4.2
82 (§ 54.1-3442.5 et seq. of the Code of Virginia) of the Drug Control Act.

83 § 6. The Board of Directors of the Virginia Cannabis Control Authority shall determine which
84 industrial hemp processors shall be permitted to conduct sales and related activities pursuant to the
85 provisions of this act and develop criteria for making such determinations. Such criteria shall comply
86 with the following: (i) no more than five industrial hemp processors shall be permitted to conduct sales
87 and related activities pursuant to the provisions of this act; (ii) an industrial hemp processor may not
88 conduct sales and related activities pursuant to the provisions of this act unless the industrial hemp
89 processor was registered with the Commissioner of Agriculture and Consumer Services pursuant to
90 Chapter 41.1 (§ 3.2-4112 et seq.) of Title 3.2 of the Code of Virginia prior to March 31, 2021; and (iii)
91 the industrial hemp processor has processed no less than 40,000 pounds of hemp.

92 § 7. No agent or employee of a pharmaceutical processor, cannabis dispensing facility, or industrial
93 hemp processor shall be prosecuted under Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1 or § 18.2-248,
94 18.2-248.1, or 18.2-250 of the Code of Virginia for possession or manufacture of marijuana or for
95 possession, manufacture, or distribution of cannabis products, subject to any civil penalty, denied any
96 right or privilege, or subject to any disciplinary action by a professional licensing board if such agent
97 or employee (i) possessed or manufactured such marijuana for the purposes of producing cannabis
98 products in accordance with the provisions of this act or (ii) possessed, manufactured, or distributed
99 such cannabis products that are consistent with generally accepted cannabis industry standards in
100 accordance with the provisions of this act.

101 § 8. The Board of Directors of the Virginia Cannabis Control Authority's (the Board) initial adoption
102 of regulations necessary to implement the provisions of this act shall be exempt from the Administrative
103 Process Act (§ 2.2-4000 et seq. of the Code of Virginia), except that the Board shall provide an
104 opportunity for public comment on the regulations prior to adoption.

105 § 9. That the provisions of this act shall become effective on January 1, 2023.

106 § 10. That the provisions of this act shall expire when pharmaceutical processors and industrial
107 hemp processors engaging in the sale of cannabis products pursuant to the provisions of this act are
108 authorized by the Virginia Cannabis Control Authority to apply for and be granted licenses to cultivate,
109 manufacture, wholesale, and sell at retail to consumers 21 years of age or older retail marijuana and
110 retail marijuana products at, in the case of pharmaceutical processors, the pharmaceutical processor
111 and cannabis dispensing facilities for which the pharmaceutical processor holds a permit pursuant to
112 § 54.1-3442.6 of the Code of Virginia or, in the case of industrial hemp processors, at the industrial
113 hemp processing facility for which the industrial hemp processor is registered with the Commissioner of
114 Agriculture and Consumer Services pursuant to Chapter 41.1 (§ 3.2-4112 et seq.) of Title 3.2 of the
115 Code of Virginia and any additional retail locations approved by the Board of Directors of the Virginia
116 Cannabis Control Authority.