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HOUSE BILL NO. 2428

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on February 10, 2023)

(Patron Prior to Substitute—Delegate Wilt)

A BILL to amend the Code of Virginia by adding a section numbered 4.1-1116 and by adding in Chapter 14 of Title 4.1 sections numbered 4.1-1404 and 4.1-1405, relating to marijuana; advertising restrictions; penalties.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 4.1-1116 and by adding in Chapter 14 of Title 4.1 sections numbered 4.1-1404 and 4.1-1405 as follows:

§ 4.1-1116. Illegal advertising; penalties; exception.

A. No person shall advertise in or send any advertising material into the Commonwealth regarding marijuana or marijuana products other than those that may be legally sold in the Commonwealth under this subtitle or Article 4.2 (§ 54.1-3442.5 et seq.) of the Drug Control Act. Advertisements regarding marijuana or marijuana products shall comply with the provisions of this subtitle and Board regulations.

B. Except as provided in subsection C, any person who violates the provisions of subsection A is guilty of a Class 1 misdemeanor.

C. For violations of § 4.1-1405 relating to distance and zoning restrictions on outdoor advertising, the Board shall give the advertiser written notice to take corrective action to either bring the advertisement into compliance with this subtitle and Board regulations or to remove such advertisement. If corrective action is not taken within 30 days, the advertiser is guilty of a Class 4 misdemeanor.

D. This section shall not apply to advertising conducted by pharmaceutical processors or cannabis dispensing facilities in accordance with Article 4.2 (§ 54.1-3442.5 et seq.) of the Drug Control Act and regulations of the Board of Pharmacy.

§ 4.1-1404. General advertising restrictions.

A. No person shall advertise in or send any advertising material into the Commonwealth regarding marijuana or marijuana products other than those that may be legally sold in the Commonwealth under this subtitle or Article 4.2 (§ 54.1-3442.5 et seq.) of the Drug Control Act.

B. Advertisements regarding marijuana or marijuana products shall:

1. Comply with the provisions of this subtitle, Board regulations, Chapter 12 (§ 33.2-1200 et seq.) of Title 33.2 and regulations adopted pursuant thereto by the Commonwealth Transportation Board, and federal laws and regulations;

2. Accurately and legibly identify the person responsible for its content;

3. Include the following statement: "For use by adults 21 years of age and older"; and

4. If the advertisement involves direct, individualized communication or dialogue, utilize a method of age affirmation to verify that the recipient is 21 years of age or older before engaging in such communication or dialogue.

C. Advertisements regarding marijuana or marijuana products shall not:

1. Be broadcasted (i) through any means unless at least 85 percent of the audience is reasonably expected to be 21 years of age or older, as determined by reliable, up-to-date audience composition data; (ii) on television or the radio at any time outside of regular school hours for elementary and secondary schools; or (iii) through digital pop-ups;

2. Be misleading, deceptive, or false;

3. Target or appeal particularly to persons younger than 21 years of age, including by use of cartoons;

4. Imply that marijuana or marijuana products enhance athletic prowess or are government endorsed;

5. Be displayed on a billboard or at a sporting event;

6. Make any reference to the intoxicating effects of marijuana or marijuana products;

7. Promote overconsumption or consumption by persons younger than 21 years of age; or

8. Depict a person consuming marijuana or marijuana products or depict any person younger than 21 years of age.

D. The provisions of this section shall not apply to noncommercial speech.

§ 4.1-1405. Outdoor advertising restrictions.

A. No outdoor advertising regarding marijuana or marijuana products shall be placed (i) on property zoned exclusively for agricultural or residential uses or on unzoned property or (ii) within 1,000 linear feet of (a) a public, private, or parochial school or an institution of higher education; (b) a

60 public or private playground or similar recreational or child-centered facility; (c) a substance use
61 disorder treatment facility; (d) a place of religious worship; or (e) a residential dwelling. Measurements
62 pursuant to this section shall be taken from the nearest edge of the sign face upon which the
63 advertisement is placed to the nearest edge of the closest building or structure located on the real
64 property of the entity set forth in this subsection; however, if there is no building or structure, the
65 measurement shall be taken from the nearest edge of the sign face upon which the advertisement is
66 placed to the nearest property line.

67 B. If at the time the advertisement was displayed, the advertisement was more than 1,000 feet from
68 an entity set forth in subsection A but the circumstances change such that the advertisement would
69 otherwise be in violation of subsection A, the Board shall permit the advertisement to remain as
70 displayed for the remainder of the term of any written advertising contract but in no event more than
71 one year from the date of the change in circumstances.

72 C. The distance and zoning restrictions contained in this section shall not apply to any sign that is
73 included in the Integrated Directional Sign Program administered by the Virginia Department of
74 Transportation or its agents.