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SENATE BILL NO. 1233

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on February 25, 2023)

(Patron Prior to Substitute—Senator Obenshain)

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 4.1-1400, 4.1-1401, and 4.1-1402, 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 4.1-1400, 4.1-1401, and 4.1-1402 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, marijuana products, or any substance containing a synthetic tetrahydrocannabinol or synthetic derivative of tetrahydrocannabinol 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, marijuana products, or any substance containing a synthetic tetrahydrocannabinol or synthetic derivative of tetrahydrocannabinol 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.

E. For the purposes of this section, "synthetic derivative" and "tetrahydrocannabinol" mean the same as those terms are defined in § 4.1-1400.

§ 4.1-1400. Definitions.

For the purposes of this chapter, unless the context requires a different meaning:

"Synthetic derivative" means a chemical compound produced by man through a chemical transformation to turn a compound into a different compound by adding or subtracting molecules to or from the original compound.

"Tetrahydrocannabinol" means any naturally occurring or synthetic tetrahydrocannabinol, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation and any preparation, mixture, or substance containing, or mixed or infused with, any detectable amount of tetrahydrocannabinol. For the purposes of this definition, "isomer" means the optical, position, and geometric isomers.

§ 4.1-1401. General advertising restrictions.

A. No person shall advertise in or send any advertising material into the Commonwealth regarding marijuana, marijuana products, or any substance containing a synthetic tetrahydrocannabinol or synthetic derivative of tetrahydrocannabinol 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, marijuana products, or any substance containing a synthetic tetrahydrocannabinol or synthetic derivative of tetrahydrocannabinol 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, marijuana products, or any substance containing a synthetic tetrahydrocannabinol or synthetic derivative of tetrahydrocannabinol shall not:

1. Be broadcasted (i) through any means unless at least 71.6 percent of the audience is reasonably expected to be 21 years of age or older, as determined by reliable, up-to-date audience composition

- 60 data or (ii) through digital pop-ups;
61 2. Be misleading, deceptive, or false;
62 3. Target or appeal particularly to persons younger than 21 years of age, including by use of
63 cartoons;
64 4. Imply that marijuana, marijuana products, or any substance containing a synthetic
65 tetrahydrocannabinol or synthetic derivative of tetrahydrocannabinol enhance athletic prowess or are
66 government endorsed;
67 5. Be displayed on a billboard or at a sporting event;
68 6. Make any reference to the intoxicating effects of marijuana, marijuana products, or any substance
69 containing a synthetic tetrahydrocannabinol or synthetic derivative of tetrahydrocannabinol;
70 7. Promote overconsumption or consumption by persons younger than 21 years of age; or
71 8. Depict a person consuming marijuana, marijuana products, or any substance containing a
72 synthetic tetrahydrocannabinol or synthetic derivative of tetrahydrocannabinol or depict any person
73 younger than 21 years of age.

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

75 **§ 4.1-1402. Outdoor advertising restrictions; limitations; variances.**

76 A. No outdoor advertising regarding marijuana, marijuana products, or any substance containing a
77 synthetic tetrahydrocannabinol or synthetic derivative of tetrahydrocannabinol shall be placed within
78 500 linear feet on the same side of the road, and parallel to such road, measured from the nearest edge
79 of the sign face upon which the advertisement is placed to the nearest edge of a building or structure
80 located on the real property of (i) a church, synagogue, mosque, or other place of religious worship;
81 (ii) a public, private, or parochial school or an institution of higher education; (iii) a public or private
82 playground or similar recreational facility; (iv) a substance use disorder treatment center; or (v) a
83 dwelling used for residential use.

84 B. However, (i) if there is no building or structure on a playground or similar recreational facility,
85 the measurement shall be from the nearest edge of the sign face upon which the advertisement is placed
86 to the property line of such playground or similar recreational facility and (ii) if a public or private
87 school providing grades K through 12 education is located across the road from a sign, the
88 measurement shall be from the nearest edge of the sign face upon which the advertisement is placed to
89 the nearest edge of a building or structure located on such real property across the road.

90 C. If, at the time the advertisement was displayed, the advertisement was more than 500 feet from (i)
91 a church, synagogue, mosque, or other place of religious worship; (ii) a public, private, or parochial
92 school or an institution of higher education; (iii) a public or private playground or similar recreational
93 facility; (iv) a substance use disorder treatment center; or (v) a dwelling used for residential use, but
94 the circumstances change such that the advertiser would otherwise be in violation of subsection A, the
95 Board shall permit the advertisement to remain as displayed for the remainder of the term of any
96 written advertising contract, but in no event more than one year from the date of the change in
97 circumstances.

98 D. The Board may grant a permit authorizing a variance from the distance requirements of this
99 section upon a finding that the placement of the advertisement on a sign will not unduly expose children
100 to advertising regarding marijuana, marijuana products, or any substance containing a synthetic
101 tetrahydrocannabinol or synthetic derivative of tetrahydrocannabinol.

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

105 F. Nothing in this section shall be construed to authorize billboard signs containing outdoor
106 advertising regarding marijuana, marijuana products, or any substance containing a synthetic
107 tetrahydrocannabinol or synthetic derivative of tetrahydrocannabinol on property zoned agricultural or
108 residential, or on any unzoned property. Nor shall this section be construed to authorize the erection of
109 new billboard signs containing outdoor advertising that would be prohibited under state law or local
110 ordinance.

111 G. All lawfully erected outdoor signs regarding marijuana, marijuana products, or any substance
112 containing a synthetic tetrahydrocannabinol or synthetic derivative of tetrahydrocannabinol shall comply
113 with the provisions of this subtitle, Board regulations, and Chapter 12 (§ 33.2-1200 et seq.) of Title 33.2
114 and regulations adopted pursuant thereto by the Commonwealth Transportation Board. Further, any
115 outdoor directional sign regarding marijuana, marijuana products, or any substance containing a
116 synthetic tetrahydrocannabinol or synthetic derivative of tetrahydrocannabinol that is located or to be
117 located on highway rights of way shall also be governed by and comply with the Integrated Directional
118 Sign Program administered by the Virginia Department of Transportation or its agents.