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SENATE BILL NO. 391

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on February 2, 2024)

(Patrons Prior to Substitute—Senators Pekarsky and Jordan [SB 529])

A *BILL to amend and reenact § 40.1-27.4 of the Code of Virginia, relating to employee protections; medicinal use of cannabis.*

Be it enacted by the General Assembly of Virginia:

1. That § 40.1-27.4 of the Code of Virginia is amended and reenacted as follows:

§ 40.1-27.4. Discipline for employee's medicinal use of cannabis prohibited.

A. As used in this section, ~~"cannabis oil"~~:

"Cannabis product" means the same as that term is defined in § 4.1-1600.

"Employee" means the same as that term is defined in § 40.1-2.

"Employer" means the same as that term is defined in § 40.1-2, except that for the purposes of this section, "employer" also includes the Commonwealth, any county, city, town, or other political subdivision thereof, and any agency of the Commonwealth or such county, city, town, or political subdivision.

B. No employer shall discharge, discipline, or discriminate against an employee for such employee's lawful use of ~~a cannabis oil product~~ *under the laws of the Commonwealth* pursuant to a valid written certification issued by a practitioner for the treatment or to eliminate the symptoms of the employee's diagnosed condition or disease pursuant to § 4.1-1601.

C. Notwithstanding the provisions of subsection B, nothing in this section shall (i) restrict an employer's ability to take any adverse employment action for any work impairment caused by the use of cannabis ~~oil~~ or to prohibit possession during work hours, (ii) require an employer to commit any act that would cause the employer to be in violation of federal law or that would result in the loss of a federal contract or federal funding, or (iii) require any defense industrial base sector employer or prospective employer, as defined by the U.S. Cybersecurity and Infrastructure Security Agency, to hire or retain any applicant or employee who tests positive for tetrahydrocannabinol (THC) in excess of 50 ng/ml for a urine test or 10 pg/mg for a hair test.