

22102314D

## HOUSE BILL NO. 176

Offered January 12, 2022

Prefiled January 10, 2022

A *BILL to amend and reenact § 4.1-606 of the Code of Virginia, relating to cannabis control; vertical integration; social equity.*

Patron—Marshall

Committee Referral Pending

**Be it enacted by the General Assembly of Virginia:****1. That § 4.1-606 of the Code of Virginia is amended and reenacted as follows:****§ 4.1-606. Regulations of the Board.**

A. The Board may promulgate reasonable regulations, not inconsistent with this subtitle or the general laws of the Commonwealth, that it deems necessary to carry out the provisions of this subtitle and to prevent the illegal cultivation, manufacture, sale, and testing of marijuana and marijuana products. The Board may amend or repeal such regulations. Such regulations shall be promulgated, amended, or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and shall have the effect of law.

B. The Board shall promulgate regulations that:

1. Govern the outdoor cultivation of marijuana by a marijuana cultivation facility licensee, including security requirements to include lighting, physical security, and alarm requirements, provided that such requirements do not prohibit the cultivation of marijuana outdoors or in a greenhouse;

2. Establish requirements for securely transporting marijuana between marijuana establishments;

3. Establish sanitary standards for retail marijuana product preparation;

4. Establish a testing program for retail marijuana and retail marijuana products pursuant to Chapter 14 (§ 4.1-1400 et seq.);

5. Establish an application process for licensure as a marijuana establishment pursuant to this subtitle in a way that, when possible, prevents disparate impacts on historically disadvantaged communities;

6. Establish requirements for health and safety warning labels to be placed on retail marijuana and retail marijuana products to be sold or offered for sale by a licensee to a consumer in accordance with the provisions of this subtitle;

7. Establish a maximum tetrahydrocannabinol level for retail marijuana products, which shall not exceed (i) five milligrams per serving for edible marijuana products and where practicable an equivalent amount for other marijuana products or (ii) 50 milligrams per package for edible marijuana products and where practicable an equivalent amount for other marijuana products. Such regulations may include other product and dispensing limitations on tetrahydrocannabinol;

8. Establish requirements for the form, content, and retention of all records and accounts by all licensees;

9. Provide alternative methods for licensees to maintain and store business records that are subject to Board inspection, including methods for Board-approved electronic and offsite storage;

10. Establish (i) criteria by which to evaluate new licensees based on the density of retail marijuana stores in the community and (ii) metrics that have similarly shown an association with negative community-level health outcomes or health disparities. In promulgating such regulations, the Board shall coordinate with the Cannabis Public Health Advisory Council established pursuant to § 4.1-603;

11. Require retail licensees to file an appeal from any hearing decision rendered by a hearing officer within 30 days of the date the notice of the decision is sent. The notice shall be sent to the licensee at the address on record with the Board by certified mail, return receipt requested, and by regular mail;

12. Prescribe the schedule of proration for refunded license fees to licensees who qualify pursuant to subsection C of § 4.1-1002;

13. Establish criteria by which to evaluate social equity license applicants, which shall be an applicant who has lived or been domiciled for at least 12 months in the Commonwealth and is either (i) an applicant with at least 66 percent ownership by a person or persons who have been convicted of or adjudicated delinquent for any misdemeanor violation of § 18.2-248.1, former § 18.2-250.1, or subsection A of § 18.2-265.3 as it relates to marijuana; (ii) an applicant with at least 66 percent ownership by a person or persons who is the parent, child, sibling, or spouse of a person who has been convicted of or adjudicated delinquent for any misdemeanor violation of § 18.2-248.1, former § 18.2-250.1, or subsection A of § 18.2-265.3 as it relates to marijuana; (iii) an applicant with at least 66 percent ownership by a person or persons who have resided for at least three of the past five years in a

INTRODUCED

HB176

59 jurisdiction that is determined by the Board after utilizing census tract data made available by the United  
60 States Census Bureau to have been disproportionately policed for marijuana crimes; (iv) an applicant  
61 with at least 66 percent ownership by a person or persons who have resided for at least three of the last  
62 five years in a jurisdiction determined by the Board after utilizing census tract data made available by  
63 the United States Census Bureau to be economically distressed; ~~or~~ (v) *an applicant whose principal*  
64 *place of business is, and was prior to July 1, 2021, located in a jurisdiction determined by the Board*  
65 *after utilizing census tract data made available by the United States Census Bureau to be economically*  
66 *distressed; or* (vi) an applicant with at least 66 percent ownership by a person or persons who graduated  
67 from a historically black college or university located in the Commonwealth;

68 14. For the purposes of establishing criteria by which to evaluate social equity license applicants,  
69 establish standards by which to determine (i) which jurisdictions have been disproportionately policed  
70 for marijuana crimes and (ii) which jurisdictions are economically distressed;

71 15. Establish standards and requirements for (i) any preference in the licensing process for qualified  
72 social equity applicants, (ii) what percentage of application or license fees are waived for a qualified  
73 social equity applicant, and (iii) a low-interest business loan program for qualified social equity  
74 applicants;

75 16. Establish guidelines, in addition to requirements set forth in this subtitle, for the personal  
76 cultivation of marijuana that promote personal and public safety, including child protection, and  
77 discourage personal cultivation practices that create a nuisance, including a nuisance caused by odor;

78 17. Establish reasonable time, place, and manner restrictions on outdoor advertising of retail  
79 marijuana or retail marijuana products, not inconsistent with the provisions of this chapter, so that such  
80 advertising displaces the illicit market and notifies the public of the location of marijuana establishments.  
81 Such regulations shall be promulgated in accordance with § 4.1-1404;

82 18. Establish restrictions on the number of licenses that a person may be granted to operate a  
83 marijuana establishment in single locality or region; and

84 19. Establish restrictions on pharmaceutical processors and industrial hemp processors that have been  
85 granted a license in more than one license category pursuant to subsection C of § 4.1-805 that ensure all  
86 licensees have an equal and meaningful opportunity to participate in the market. Such regulations may  
87 limit the amount of products cultivated or manufactured by the pharmaceutical processor or industrial  
88 hemp processor that such processor may offer for sale in its retail marijuana stores.

89 C. The Board may promulgate regulations that:

90 1. Limit the number of licenses issued by type or class to operate a marijuana establishment;  
91 however, the number of licenses issued shall not exceed the following limits:

92 a. Retail marijuana stores, 400;

93 b. Marijuana wholesalers, 25;

94 c. Marijuana manufacturing facilities, 60; and

95 d. Marijuana cultivation facilities, 450.

96 In determining the number of licenses issued pursuant to this subdivision, the Board shall not  
97 consider any license granted pursuant to subsection C of § 4.1-805 to (i) a pharmaceutical processor that  
98 has been issued a permit by the Board of Pharmacy pursuant to Article 4.2 (§ 54.1-3442.5 et seq.) of the  
99 Drug Control Act or (ii) an industrial hemp processor registered with the Commissioner of Agriculture  
100 and Consumer Services pursuant to Chapter 41.1 (§ 3.2-4112 et seq.) of Title 3.2.

101 2. Prescribe any requirements deemed appropriate for the administration of taxes under §§ 4.1-1003  
102 and 4.1-1004, including method of filing a return, information required on a return, and form of  
103 payment.

104 3. Limit the allowable square footage of a retail marijuana store, which shall not exceed 1,500 square  
105 feet.

106 4. Allow certain persons to be granted or have interest in a license in more than one of the following  
107 license categories: marijuana cultivation facility license, marijuana manufacturing facility license,  
108 marijuana wholesaler license, or retail marijuana store license. Such regulations shall be drawn narrowly  
109 to limit vertical integration to small businesses and ensure that all licensees have an equal and  
110 meaningful opportunity to participate in the market.

111 D. Board regulations shall be uniform in their application, except those relating to hours of sale for  
112 licensees.

113 E. Courts shall take judicial notice of Board regulations.

114 F. The Board shall consult with the Cannabis Public Health Advisory Council in promulgating any  
115 regulations relating to public health, including regulations promulgated pursuant to subdivision B 3, 4, 6,  
116 7, 10, or 16, and shall not promulgate any such regulation that has not been approved by a majority of  
117 the members of the Cannabis Public Health Advisory Council.

118 G. With regard to regulations governing licensees that have been issued a permit by the Board of  
119 Pharmacy to operate as a pharmaceutical processor or cannabis dispensing facility pursuant to Article 4.2  
120 (§ 54.1-3442.5 et seq.) of the Drug Control Act, the Board shall make reasonable efforts (i) to align

such regulations with any applicable regulations promulgated by the Board of Pharmacy that establish health, safety, and security requirements for pharmaceutical processors and cannabis dispensing facilities and (ii) to deem in compliance with applicable regulations promulgated pursuant to this subtitle such pharmaceutical processors and cannabis dispensing facilities that have been found to be in compliance with regulations promulgated by the Board of Pharmacy that mirror or are more extensive in scope than similar regulations promulgated pursuant to this subtitle.

H. The Board's power to regulate shall be broadly construed.

**2. That, notwithstanding any other provision of law, if an act of assembly is passed by the 2022 Session of the General Assembly that creates licenses to allow for the cultivation, manufacture, wholesale, retail sale, and testing of retail marijuana and retail marijuana products in the Commonwealth, any industrial hemp processor that (i) 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 completed such registration prior to July 1, 2021, and (ii) either (a) has a farmer agronomy program and participates in a revenue risk-sharing program with at least 35 farmers or (b) has processed prior to July 1, 2021, at least 50,000 pounds of industrial hemp in the Commonwealth shall be permitted to possess one or any combination of the following licenses: marijuana cultivation facility license, marijuana manufacturing facility license, marijuana wholesaler license, or retail marijuana store license. However, no industrial hemp processor that has been issued a marijuana cultivation facility license, marijuana manufacturing facility license, marijuana wholesaler license, or retail marijuana store license shall be issued a marijuana testing facility license or have any interest in a marijuana testing facility licensee. Any industrial hemp processor who wishes to possess a license in more than one license category pursuant to this act shall (a) pay a \$1 million fee to the Board of Directors of the Virginia Cannabis Control Authority (the Board) and (b) submit a diversity, equity, and inclusion plan to the Cannabis Business Equity and Diversity Support Team (the Support Team) for approval and, upon approval, implement such plan in accordance with the requirements set by the Support Team. Fees collected by the Board pursuant to this act shall be allocated to the Virginia Cannabis Equity Loan Fund, the Virginia Cannabis Equity Reinvestment Fund, or a program, as determined by the Board, that provides job training services to persons recently incarcerated.**