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SENATE BILL NO. 313

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on February 4, 2022)

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

A BILL to allow certain pharmaceutical 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 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 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 in no more than 80,000 square feet of canopy the number of cannabis plants, as determined by the pharmaceutical processor, necessary to serve the demand for sales created by this act;

d. 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 diversity, equity, and inclusion plan describing how the pharmaceutical 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 five qualified social equity applicant retailers for a period of six months or support and educate qualified social equity applicants that wish to participate in the cannabis market; and

f. Pay a one-time \$6 million fee to the Department of Taxation prior to engaging in sales pursuant to this act;

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

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

c. 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;

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

e. 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

f. Be subject to administrative action, liability, or other penalty based on the acts or omissions of any independent cannabis retailer; and

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

For the purposes of this act, "canopy" means any area dedicated to live marijuana plant cultivation, including areas in which plants are grown, propagated, cloned, or maintained. If any such areas are stacked vertically, each level of space shall be measured and included in the total canopy square footage.

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

§ 3. A tax of 21 percent shall be levied on the sale of cannabis products pursuant to this act, which shall be in addition to any tax imposed under Chapter 6 (§ 58.1-600 et seq.) of Title 58.1 of the Code of Virginia or any other provision of federal, state, or local law. Pharmaceutical processors shall remit such tax to the Department of Taxation. The Department of Taxation shall deposit tax revenues from the 21 percent excise tax, as well as the fees received from pharmaceutical processors pursuant to § 1, into the account of the Virginia Cannabis Control Authority to be used to provide loans to qualified social equity applicants who are in need of capital for the start-up of a licensed cannabis business.

Any locality may by ordinance levy a three percent tax on the sale of cannabis products pursuant to this act. Such local tax shall be in addition to any local sales tax imposed under Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, any food and beverage tax imposed under Article 7.1 (§ 58.1-3833 et seq.) of Chapter 38 of Title 58.1, and any excise tax imposed on meals under § 58.1-3840. If a town imposes a tax under this section, any tax imposed by its surrounding county under this section shall not apply within the limits of the town. Nothing in this section shall be construed to prohibit a locality from imposing any tax authorized by law on a person or property regulated under this act. Any locality that enacts an ordinance pursuant to this section shall, within 30 days, notify the Virginia Cannabis Control Authority and any pharmaceutical processor in such locality of the ordinance's enactment. The ordinance shall take effect on the first day of the second month following its enactment. Any local tax levied under this section shall be remitted and disbursed to the Virginia Cannabis Control Authority in the same manner as the 21 percent state excise tax and, thereafter, disbursed to the applicable locality.

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

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

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

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

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

§ 9. That the provisions of this act shall expire when the Virginia Cannabis Control Authority provides written notice to the Division of Legislative Services that pharmaceutical processors engaging in the sale of cannabis products pursuant to the provisions of this act are authorized by the Virginia Cannabis Control Authority to apply for and be granted licenses to cultivate, manufacture, wholesale, and sell at retail to consumers 21 years of age or older retail marijuana and retail marijuana products at 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.