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SENATE BILL NO. 313

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Ebbin
on February 14, 2022)

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

A *BILL to allow certain pharmaceutical processors and industrial hemp 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, pharmaceutical processors that hold a permit pursuant to § 54.1-3442.6 of the Code of Virginia and industrial hemp processors, subject to the provisions of § 6, that are 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 shall be authorized to, under the oversight of the Board of Pharmacy, 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. All sales and related activities conducted pursuant to this act shall be subject to all regulations 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 and industrial hemp 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 of Pharmacy data regarding all sales conducted pursuant to this act, including information regarding violations, errors, and omissions;

c. In the case of pharmaceutical processors, be permitted to cultivate in no more than 150,000 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. In the case of industrial hemp processors, be permitted to cultivate in no more than 75,000 square feet of canopy the number of cannabis plants, as determined by the industrial hemp processor, necessary to serve the demand for sales created by this act;

e. In the case of pharmaceutical processors, 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;

f. Submit to the Board of Directors of the Virginia Cannabis Control Authority and, upon approval by the Board of Directors, comply with a diversity, equity, and inclusion plan describing how the pharmaceutical processor or industrial hemp processor will, in its health service area or other area determined by the Board of Directors, (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;

g. In the case of pharmaceutical processors, pay a one-time \$6 million fee to the Department of Taxation prior to engaging in sales pursuant to this act; and

h. In the case of industrial hemp processors, pay a one-time \$3 million fee to the Department of Taxation prior to engaging in sales pursuant to this act;

3. Pharmaceutical processors and industrial hemp 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, in the case of pharmaceutical processors, 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 or, in the case of industrial hemp processors, the industrial hemp processing facility for which the industrial hemp processor 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 up to two additional retail locations, as determined by the Board of Pharmacy in a manner that ensures geographic dispersion of such additional retail locations across the Commonwealth; however, if the existing pharmaceutical processor facility or industrial hemp processing facility is located within one-half mile of a public or private elementary or secondary school, the pharmaceutical processor or industrial hemp processor may exercise its retail privileges for such facility at another location that is within a 10-mile radius and has been approved by the Board of Pharmacy;

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; or

e. 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 and industrial hemp processor facilities and retail locations 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 Pharmacy may suspend the privileges of a pharmaceutical processor or industrial hemp 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 by pharmaceutical processors or industrial hemp processors 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 and industrial hemp 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 and industrial hemp 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 by pharmaceutical processors or industrial hemp processors 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 of the Code of Virginia, any food and beverage tax imposed under Article 7.1 (§ 58.1-3833 et seq.) of Chapter 38 of Title 58.1 of the Code of Virginia, and any excise tax imposed on meals under § 58.1-3840 of the Code of Virginia. 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 Board of Pharmacy, the Virginia Cannabis Control Authority, and any pharmaceutical processor or industrial hemp 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 to Department of Taxation in the same manner as the 21 percent state excise tax and, thereafter, disbursed to the applicable locality.

§ 4. The Board of Pharmacy and the Department of Taxation may assess and collect fees from each pharmaceutical processor and industrial hemp 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. The Board of Pharmacy shall, after consultation with the Board of Directors of the Virginia Cannabis Control Authority, determine which industrial hemp processors shall be permitted to conduct sales and related activities pursuant to the provisions of this act and develop criteria for making such determinations. Such criteria shall comply with the following: (i) no more than 10 industrial hemp processors shall be permitted to conduct sales and related activities pursuant to the provisions of this act and (ii) an industrial hemp processor may not conduct sales and related activities pursuant to the provisions of this act unless the industrial hemp processor was 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 prior to March 31, 2021, and has processed no less than 40,000 pounds of hemp.

§ 7. No agent or employee of a pharmaceutical processor, cannabis dispensing facility, or industrial hemp processor 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

122 such cannabis products that are consistent with generally accepted cannabis industry standards in
123 accordance with the provisions of this act.

124 § 8. The Board of Directors of the Virginia Cannabis Control Authority shall promulgate regulations
125 governing sales, cultivation, extraction, processing, manufacturing, wholesaling, and other related
126 activities conducted pursuant to this act that shall model, to the greatest extent practicable, the
127 regulations of the Board of Pharmacy governing pharmaceutical processors set forth in 18VAC110-60 of
128 the Virginia Administrative Code, subject to the exceptions and requirements set forth in § 1 of this act.
129 The Board of Directors of the Virginia Cannabis Control Authority's initial adoption of regulations
130 necessary to implement the provisions of this act shall be exempt from the Administrative Process Act
131 (§ 2.2-4000 et seq. of the Code of Virginia), except that the Board of Directors shall provide an
132 opportunity for public comment on the regulations prior to adoption. Upon the effective date of such
133 regulations adopted by the Board of Directors of the Virginia Cannabis Control Authority, (i) oversight
134 of all sales, cultivation, extraction, processing, manufacturing, wholesaling, and other related activities
135 conducted pursuant to this act shall transfer from the Board of Pharmacy to the Board of Directors of
136 the Virginia Cannabis Control Authority and (ii) the Board of Directors of the Virginia Cannabis
137 Control Authority shall be vested with all powers and duties conferred upon the Board of Pharmacy
138 pursuant to this act.

139 § 9. That the provisions of this act shall not become effective unless an act is passed during the 2022
140 Regular Session of the General Assembly that becomes law that establishes a comprehensive, statewide
141 regulatory and licensing structure for the sale of retail marijuana and retail marijuana products in the
142 Commonwealth under the oversight of the Virginia Cannabis Control Authority. If such contingency is
143 met, the provisions of this act shall become effective on September 15, 2022.

144 § 10. That the provisions of this act shall expire when the Virginia Cannabis Control Authority
145 provides written notice to the Division of Legislative Services that pharmaceutical processors and
146 industrial hemp processors engaging in the sale of cannabis products pursuant to the provisions of this
147 act are authorized by the Virginia Cannabis Control Authority to apply for and be granted licenses to
148 cultivate, manufacture, wholesale, or sell at retail to consumers 21 years of age or older retail
149 marijuana and retail marijuana products at, in the case of pharmaceutical processors, the
150 pharmaceutical processor and cannabis dispensing facilities for which the pharmaceutical processor
151 holds a permit pursuant to § 54.1-3442.6 of the Code of Virginia or, in the case of industrial hemp
152 processors, at the industrial hemp processing facility for which the industrial hemp processor is
153 registered with the Commissioner of Agriculture and Consumer Services pursuant to Chapter 41.1
154 (§ 3.2-4112 et seq.) of Title 3.2 of the Code of Virginia and any additional retail locations approved by
155 the Board of Directors of the Virginia Cannabis Control Authority.