



Marijuana Legalization

Overview of HB 2312 and SB 1406

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I. Introduction

During the 2021 Special Session I, the General Assembly passed HB 2312 (Herring) and SB 1406 (Ebbin and Lucas) (hereinafter, the legislation), which, among other things, allow persons 21 years of age or older to possess up to one ounce of marijuana and cultivate up to four marijuana plants at their residence for personal consumption. To facilitate the legalization of marijuana, the legislation created a regulatory and licensing framework to govern the cultivation, manufacture, testing, and sale of marijuana in the Commonwealth, to be administered by the newly created Virginia Cannabis Control Authority (the Authority).

The legislation amended or created more than 200 Code sections. While the legislation addressed many issues ancillary to the legalization of marijuana, including changes to the Commonwealth's expungement laws, this issue brief focuses on the Cannabis Control Act (§ 4.1-600 et seq. of the Code of Virginia), created by the legislation as Subtitle II of Title 4.1, which includes the primary provisions governing the administration and licensing of the retail marijuana market, as well as applicable criminal provisions.

II. Summary of the Cannabis Control Act

The following is a summary of some of the key provisions of the Cannabis Control Act, divided into four categories: administration, licensing, safeguards, and prohibited conduct.

A. Administration

1. State Administration

Section 4.1-601 establishes the Authority as an independent political subdivision of the Commonwealth, exclusive of the legislative, executive, and judicial branches of state government. The Authority consists of the Board of Directors (the Board), the Cannabis Public Health Advisory Council,¹ the Chief Executive Officer, and the agents and employees of the Authority.² The Board is vested with control of the possession, sale, transportation, distribution, and delivery of retail marijuana and retail marijuana products in the Commonwealth, with plenary power to prescribe and enforce regulations in this regard.³ Among the powers given to

¹ The Cannabis Public Health Advisory Council is a 21-member advisory council to the Board, established for the purposes of assessing and monitoring public health issues, trends, and impacts related to marijuana and of making recommendations regarding health warnings, retail marijuana and retail marijuana products safety and product composition, and public health awareness, programming, and related resource needs.

² VA. CODE § 4.1-602.

³ VA. CODE § 4.1-601.

the Board are the powers to grant, suspend, and revoke marijuana licenses; determine the containers suitable for holding marijuana and the requisite labels therefor; sue and be sued; enter into contracts; acquire, hold, and sell property; hold and conduct hearings; assess and collect civil penalties and charges for violations of the Cannabis Control Act and Board regulations; and do all acts necessary or advisable to carry out the purposes of the Act.⁴

In addition to tasking the Authority with the duty to regulate and administer the retail marijuana market in the Commonwealth, the legislation imposes a strict timeline on the Authority's satisfaction of certain milestones. Among these, the Board is required to promulgate all regulations necessary to implement the provisions of the legislation by July 1, 2023.⁵ Pursuant to mandates in the legislation, such regulations must include, at a minimum, provisions governing outdoor cultivation, transportation, sanitation, testing, licensing, labeling, tetrahydrocannabinol (THC) limits, local saturation, social equity provisions, home cultivation, and advertising.⁶

Moreover, to ensure that no retail marijuana is sold or otherwise transferred except as authorized by law, the Board is required to develop and maintain a seed-to-sale tracking system whereby retail marijuana is tracked from the seed or immature plant stage until it is sold to a customer at a retail marijuana store.⁷ The legislation also vests the Authority with the powers necessary to enforce the regulatory, civil, and criminal provisions associated with the retail marijuana market. Specifically, § 4.1-624 vests in the members of the Board, and certain agents and employees designated by the Board, with the same police power given to local chief law-enforcement officers.

In light of projections indicating that the Commonwealth will generate significant revenue from the retail marijuana market, the legislation preemptively establishes parameters for the manner in which such revenue will be appropriated. As set forth in subsection B of § 4.1-614, after accounting for the Authority's expenses, net profits will be appropriated as follows:

- Forty percent to pre-kindergarten programs for at-risk three-year-olds and four-year-olds;
- Thirty percent to the Cannabis Equity Reinvestment Fund established pursuant to § 2.2-2499.8;
- Twenty-five percent to the Department of Behavioral Health and Developmental Services, to be distributed to community services boards for the purpose of administering substance use disorder prevention and treatment programs; and
- Five percent to public health programs, including public awareness campaigns that are designed to prevent drugged driving, discourage underage consumption, and inform the public of other potential risks.

In large part, revenue will be generated through the tax structure established for marijuana sales in the legislation. In addition to any tax imposed under Chapter 6 (§ 58.1-600 et seq.) of Title 58.1 and certain other federal, state, and local taxes, a tax of 21 percent will be levied on

⁴ VA. CODE § 4.1-604.

⁵ However, the legislation prohibits the Board from adopting regulations prior to July 1, 2022, and requires the Board to present all regulations to the Virginia Cannabis Oversight Commission, as created by the legislation, for review prior to adoption.

⁶ VA. CODE § 4.1-606.

⁷ VA. CODE § 4.1-611.



the sale of any retail marijuana, retail marijuana products, marijuana paraphernalia sold by a retail marijuana store, non-retail marijuana, and non-retail marijuana products.⁸ Additionally, localities are permitted to levy a three percent tax on such sales.⁹

2. Local Administration

While the regulatory structure of the retail marijuana market in the Commonwealth is set to be handled on the state level, the legislation provides some authority to localities. Pursuant to § 4.1-629, subject to reenactment, on or after July 1, 2022, localities may hold referendums on the question of whether retail marijuana stores should be prohibited in the locality. If a majority of the qualified voters voting in such referendum votes "No," retail marijuana stores will be permitted to operate within the locality 60 days after the results are certified or on January 1, 2024, whichever is later, and no subsequent referendum may be held on the same question within such locality. However, if a majority of the qualified voters votes "Yes," retail marijuana stores will be prohibited in the locality effective January 1 of the year immediately following the referendum. In this case, a subsequent referendum on the same question may be held but not earlier than four years following the date of the previous referendum.

Notably, the twenty-third enactment of the legislation requires all localities that choose to hold a referendum on this question to hold an initial referendum and certify the results by December 31, 2022. If a locality fails to hold such referendum prior to this date, the locality is prohibited from holding a referendum on this question thereafter.

Subject to certain restrictions, the legislation also allows localities to adopt ordinances that limit the hours during which retail marijuana may be sold,¹⁰ prohibit and provide penalties for possession of marijuana in public and certain other places, or otherwise regulate businesses licensed by the Authority via zoning restrictions, land use requirements, and other similar restrictions.¹¹ Aside from the aforementioned allowances, localities are not permitted to adopt any ordinance that regulates or prohibits the cultivation, manufacture, possession, sale, wholesale distribution, handling, transportation, consumption, use, advertising, or dispensing of retail marijuana.¹²

B. Licensing

1. Licensing - General

The legislation creates five types of marijuana licenses:

- Marijuana cultivation facility licenses
- Marijuana manufacturing facility licenses
- Marijuana wholesaler licenses
- Retail marijuana store licenses
- Marijuana testing facility licenses

⁸ VA. CODE § 4.1-1003, subject to reenactment by the 2022 Session.

⁹ VA. CODE § 4.1-1004, subject to reenactment by the 2022 Session.

¹⁰ VA. CODE § 4.1-631, subject to reenactment by the 2022 Session.

¹¹ VA. CODE § 4.1-630, subject to reenactment by the 2022 Session.

Id.



A **marijuana cultivation facility license** authorizes the licensee to cultivate, label, and package retail marijuana; to purchase or take possession of marijuana plants and seeds from other marijuana cultivation facilities; to transfer possession of and sell retail marijuana, immature marijuana plants, and marijuana seeds to marijuana wholesalers and retail marijuana stores; to transfer possession of and sell retail marijuana, marijuana plants, and marijuana seeds to other marijuana cultivation facilities; to transfer possession of and sell retail marijuana to marijuana manufacturing facilities; and to sell immature marijuana plants and marijuana seeds to consumers for the purpose of cultivating marijuana at home for personal use.¹³

A **marijuana manufacturing facility license** authorizes the licensee to manufacture, label, and package retail marijuana and retail marijuana products; to purchase or take possession of retail marijuana from a marijuana cultivation facility or another marijuana manufacturing facility; and to transfer possession of and sell retail marijuana and retail marijuana products to marijuana wholesalers, retail marijuana stores, or other marijuana manufacturing facilities.¹⁴

A **marijuana wholesaler license** authorizes the licensee to purchase or take possession of retail marijuana, retail marijuana products, immature marijuana plants, and marijuana seeds from a marijuana cultivation facility, a marijuana manufacturing facility, or another marijuana wholesaler and to transfer possession and sell or resell retail marijuana, retail marijuana products, immature marijuana plants, and marijuana seeds to a marijuana cultivation facility, marijuana manufacturing facility, retail marijuana store, or another marijuana wholesaler.¹⁵

A **retail marijuana store license** authorizes the licensee to purchase or take possession of retail marijuana, retail marijuana products, immature marijuana plants, or marijuana seeds from a marijuana cultivation facility, marijuana manufacturing facility, or marijuana wholesaler and to sell retail marijuana, retail marijuana products, immature marijuana plants, or marijuana seeds to consumers on premises approved by the Board. Retail marijuana stores may not employ a person younger than 21 years of age, give away retail marijuana or retail marijuana products, sell more than one ounce of marijuana or an equivalent amount of marijuana products to one person during a single transaction, or conduct sales through any means other than a direct, face-to-face transaction.¹⁶

A **marijuana testing facility license** authorizes the licensee to develop, research, or test retail marijuana, retail marijuana products, and other substances. In an effort to promote independent testing, the legislation prohibits any person that has an interest in a marijuana testing facility license from having any interest in a licensed marijuana cultivation facility, marijuana manufacturing facility, marijuana wholesaler, or retail marijuana store.¹⁷

2. Licensing - Limitations

The legislation imposes numerous limits on the issuance of licenses. Licenses issued pursuant to the Cannabis Control Act are not transferable.¹⁸ Consequently, while a retail marijuana store licensee, for example, may be permitted to sell its store and associated contracts,

¹³ VA. CODE § 4.1-800, subject to reenactment by the 2022 Session.

¹⁴ VA. CODE § 4.1-801, subject to reenactment by the 2022 Session.

¹⁵ VA. CODE § 4.1-803, subject to reenactment by the 2022 Session.

¹⁶ VA. CODE § 4.1-804, subject to reenactment by the 2022 Session.

¹⁷ VA. CODE § 4.1-802, subject to reenactment by the 2022 Session.

¹⁸ VA. CODE § 4.1-702, subject to reenactment by the 2022 Session.



it may not sell its license to the buyer; rather, the buyer would need to apply to the Board for the appropriate license in order to lawfully operate the store.

In crafting the legislation, the General Assembly chose to prohibit, for the most part, vertical integration within the Commonwealth's marijuana industry. Consequently, subsection B of § 4.1-805, subject to reenactment by the 2022 Session, prevents a person from being granted or having an interest in a license in more than one license category. This rule would prohibit, for example, a marijuana manufacturer from also operating a retail store. However, the legislation included two exceptions to this general prohibition on vertical integration.

The first exception provides the Board with the authority via regulation to allow vertical integration by small businesses.¹⁹

The second exception allows vertical integration by (i) pharmaceutical processors that have been issued a permit by the Board of Pharmacy pursuant to Article 4.2 (§ 54.1-3442.5 et seq.) of the Drug Control Act and (ii) industrial hemp processors that have registered with the Commissioner of Agriculture and Consumer Services pursuant to Chapter 41.1 (§ 3.2-4112 et seq.) of Title 3.2.²⁰ However, any pharmaceutical processor or industrial hemp processor that wishes to obtain a license in more than one license category must (a) pay a \$1 million fee²¹ to 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. Under both exceptions, the Board has a duty to ensure that allowable vertical integration practices do not deprive other licensees of an equal and meaningful opportunity to participate in the market.²²

The legislation also imposes limits on the number of licenses that may be issued by the Board. Specifically, subdivision C 1 of § 4.1-606 allows the Board to promulgate regulations that limit the number of licenses issued by type or class to operate a marijuana establishment, provided that the number of licenses issued does not exceed the following limits: 400 retail marijuana store licenses, 25 marijuana wholesaler licenses, 60 marijuana manufacturing facility licenses, and 450 marijuana cultivation facility licenses.²³

3. Licensing - Social Equity

The legislation includes numerous social equity provisions that attempt to promote business ownership and economic growth among communities that have been disproportionately impacted by the former prohibition of marijuana. Among these provisions, the Board is required when issuing licenses to give preference to qualified social equity applicants for the first six months after it begins issuing licenses. Moreover, for five years the Board is required to reserve a license slot for a qualified social equity applicant for every license that was initially granted to a social

¹⁹ VA. CODE § 4.1-606(C)(4).

²⁰ VA. CODE § 4.1-805(C), subject to reenactment by the 2022 Session.

²¹ Vertical integration fees collected by the Board will be allocated to (i) the Virginia Cannabis Equity Loan Fund, (ii) the Virginia Cannabis Equity Reinvestment Fund, or (iii) a program, as determined by the Board, that provides job training services to persons recently incarcerated. VA. CODE § 4.1-805(C), subject to reenactment by the 2022 Session.

²² VA. CODE § 4.1-606(B)(19) and (C)(4).

²³ In determining the number of licenses issued, the Board will not include any license granted through allowable vertical integration practices to a pharmaceutical processor or an industrial hemp processor. VA. CODE § 4.1-606(C)(1).



equity applicant and was subsequently surrendered. Subdivision B 13 of § 4.1-606 provides that a "social equity applicant" is an applicant that has lived or been domiciled for at least 12 months in the Commonwealth and is an applicant with at least 66 percent ownership by a person or persons who (i) have been convicted of or adjudicated delinquent for a misdemeanor marijuana violation; (ii) are the parent, child, sibling, or spouse of a person who has been convicted of or adjudicated delinquent for a misdemeanor marijuana violation; (iii) have resided for at least three of the past five years in a jurisdiction that is determined by the Board after utilizing data made available by the United States Census Bureau to have been disproportionately policed for marijuana crimes; (iv) have resided for at least three of the last five years in a jurisdiction determined by the Board after utilizing data made available by the United States Census Bureau to be economically distressed; or (v) have graduated from a historically black college or university located in the Commonwealth.

The legislation also creates the Virginia Cannabis Equity Business Loan (VCEBL) Program and Fund to assist social equity licensees. Moneys in the VCEBL Fund will be used solely for the purposes of providing low-interest and zero-interest loans to social equity licensees in order to foster business ownership and economic growth among communities that have been the most disproportionately impacted by the former prohibition of marijuana.²⁴ Loans will be issued through the VCEBL Program, to be established by the Authority.²⁵

Additionally, the legislation establishes a Cannabis Equity Reinvestment (CER) Board and Fund to address the impact of economic disinvestment, violence, and historical overuse of criminal justice responses to communities and individuals by providing resources to support local design and control of community-based responses to such impacts.²⁶ The primary powers and duties of the CER Board consist of the following: (a) support persons, families, and communities historically and disproportionately targeted and affected by drug enforcement; (b) develop and implement scholarship programs and educational and vocational resources for historically marginalized persons who have been adversely impacted by substance use individually, in their families, or in their communities; (c) develop and implement a program to award grants to support workforce development programs, mentoring programs, job training and placement services, apprenticeships, and reentry services that serve persons and communities historically and disproportionately targeted by drug enforcement; (d) administer the CER Fund; and (e) collaborate with the Board and the Office of Diversity, Equity, and Inclusion to implement programs and provide recommendations in line with CER Program purposes.²⁷

The legislation directs moneys in the CER Fund to be used to support the same purposes for which the CER Board is empowered to act and in addition to provide funds for the Virginia Indigent Defense Commission and the aforementioned VCEBL Fund.²⁸

C. Safeguards

Numerous safeguard provisions were included in the legislation in an effort to prevent the legalization of marijuana and creation of a retail marijuana market from adversely affecting the health, safety, and welfare of the people of the Commonwealth. The legislation requires the

²⁴ VA. CODE § 4.1-1501.

²⁵ VA. CODE § 4.1-1502.

²⁶ VA. CODE § 2.2-2499.5.

²⁷ VA. CODE § 2.2-2499.7.

²⁸ VA. CODE § 2.2-2499.8.

Board to establish a testing program for retail marijuana and retail marijuana products.²⁹ The program must require licensees, prior to selling or distributing retail marijuana or a retail marijuana product to a consumer or to another licensee, to submit a representative sample of the retail marijuana or retail marijuana product to a licensed marijuana testing facility for testing to ensure that the retail marijuana or retail marijuana product does not exceed the maximum level of allowable THC or contamination and to ensure correct labeling. The Board is further required to establish acceptable testing and research practices, quality control analysis, equipment certification and calibration requirements, marijuana testing facility recordkeeping, and disposal practices.

Retail marijuana and retail marijuana products to be offered for sale by a licensee to a consumer must be labeled with the following information: (i) identification of the type of marijuana or marijuana product and the date of cultivation, manufacturing, and packaging; (ii) the license numbers of the marijuana cultivation facility, the marijuana manufacturing facility, and the retail marijuana store where the retail marijuana or retail marijuana product was cultivated, manufactured, and offered for sale; (iii) a statement of the net weight of the retail marijuana or retail marijuana product; (iv) information concerning pharmacologically active ingredients and potency, including information regarding THC and cannabidiol (CBD); (v) information regarding serving sizes; (vi) information on gases, solvents, and chemicals used in marijuana extraction; (vii) instructions on usage; (viii) a list of ingredients and possible allergens; (ix) a recommended use by date or expiration date; (x) a nutritional fact panel; (xi) a universal symbol; and (xii) a warning that the product is for use only by persons 21 years of age or older, impairs cognition and the ability to drive, may be habit forming, and should not be used while pregnant or breastfeeding.³⁰ Retail marijuana and retail marijuana products must also be packaged in child-resistant, tamper-evident, and resealable packaging that is opaque.³¹

Edible retail marijuana products and other retail marijuana products deemed applicable by the Authority may not contain more than five milligrams of THC per serving and 50 milligrams of THC per package, nor shall they contain additives that are toxic or harmful, are designed to make the product more addictive, contain alcohol or nicotine, are misleading, or are designed to make the product appeal particularly to persons younger than 21 years of age.³²

The legislation also contains restrictions on advertising retail marijuana and retail marijuana products.³³ For example, licensees are prohibited from advertising through pop-up digital advertisements, through any means in which less than 85 percent of the audience is reasonably expected to be 21 years of age or older, and through television or radio advertisements at any time outside of regular school hours for elementary and secondary schools. Licensees are prohibited from displaying pricing through any means of advertisement other than their establishment website, which must be registered with the Authority, or an opt-in subscription-based service, provided that the licensee utilizes proper age verification techniques to confirm that the person attempting to access the website or sign up for a subscription-based service is 21 years of age or older. Advertisements must also identify the responsible licensee, include a statement that marijuana and marijuana products are only for use by persons 21 years of age or

²⁹ VA. CODE § 4.1-1400, subject to reenactment by the 2022 Session.

³⁰ VA. CODE § 4.1-1402, subject to reenactment by the 2022 Session.

³¹ *Id.*

³² VA. CODE § 4.1-1403, subject to reenactment by the 2022 Session.

³³ VA. CODE § 4.1-1404, subject to reenactment by the 2022 Session.



older, not contain misleading, deceptive, or false information, and comply with any other provisions imposed by Board regulations.³⁴

D. Prohibited Conduct

To accommodate for the legalization of marijuana and creation of a retail marijuana market, the legislation overhauled much of the Commonwealth's criminal marijuana laws. This portion of the issue brief explains some of the key criminal and civil rules under the new structure of legalized marijuana.

Pursuant to § 4.1-1100, persons 21 years of age or older may lawfully possess on their person or in any public place up to one ounce of marijuana or an equivalent amount of marijuana product as determined by Board regulation. A person who possesses more than one ounce but not more than one pound will be subject to a \$25 civil penalty, while a person who possesses more than one pound is guilty of a felony punishable by a term of imprisonment of not less than one year nor more than 10 years and a fine of not more than \$250,000, or both.

Persons 21 years of age or older are also permitted to cultivate up to four marijuana plants at their residence for personal use; however, no household may contain more than four marijuana plants.³⁵ Persons engaging in home cultivation must ensure that no marijuana plant is visible from a public way, take precautions to prevent unauthorized access by persons younger than 21 years of age, and attach to each marijuana plant a legible tag that includes the person's name, driver's license or identification number, and a notation that the marijuana plant is being grown for personal use. Section 4.1-1101 of the legislation imposes the following penalties for violations of the limit of cultivating a maximum of four marijuana plants for personal use:

1. For possession of more than four marijuana plants but no more than 10 marijuana plants, (i) a civil penalty of \$250 for a first offense, (ii) a Class 3 misdemeanor for a second offense, and (iii) a Class 2 misdemeanor for a third and any subsequent offense;
2. For possession of more than 10 but no more than 49 marijuana plants, a Class 1 misdemeanor;
3. For possession of more than 49 but no more than 100 marijuana plants, a Class 6 felony; and
4. For possession of more than 100 marijuana plants, a felony punishable by a term of imprisonment of not less than one year nor more than 10 years and a fine of not more than \$250,000, or both.

Except for persons engaging in home cultivation for personal use within the parameters outlined above, any person who cultivates or manufactures marijuana or marijuana products without the appropriate license is guilty of a Class 6 felony.³⁶

The legislation includes "adult sharing" provisions that allow persons 21 years of age or older to share up to one ounce of marijuana or an equivalent amount of marijuana products with another person who is 21 years of age or older.³⁷ However, allowable "adult sharing" does not

³⁴ The legislation also includes several restrictions on outdoor advertisements, which can be found in § 4.1-1405, subject to reenactment by the 2022 Session.

³⁵ VA. CODE § 4.1-1101.

³⁶ VA. CODE § 4.1-1102, subject to reenactment by the 2022 Session.

³⁷ VA. CODE § 4.1-1101.1.



include situations in which (i) marijuana is given in exchange for remuneration; (ii) marijuana is given away contemporaneously with another reciprocal transaction between the same parties; (iii) a gift of marijuana is offered or advertised in conjunction with an offer for the sale of goods or services; or (iv) a gift of marijuana is contingent upon a separate reciprocal transaction for goods or services.

The legislation includes penalties for selling marijuana or marijuana products to a minor,³⁸ underage possession,³⁹ use of marijuana during the operation of a motor vehicle,⁴⁰ public consumption,⁴¹ and more. The legislation also penalizes certain acts specific to marijuana licensees, which can be found in Chapter 12 (§ 4.1-1200 et seq.) of Title 4.1, subject to reenactment by the 2022 Session.

III. Timeline

Because the creation of a retail marijuana market is not a task that can be accomplished in short order, the legislation establishes a graduated timeline for completion of the various items that must be accomplished. Here are some of the key timeline milestones:

July 1, 2021

- Persons 21 years of age or older may possess up to one ounce of marijuana or an equivalent amount of marijuana products and may begin cultivating up to four marijuana plants at their residence for personal consumption. Other ancillary criminal provisions also become effective on this date, including adult sharing, underage possession, open container, and public consumption provisions.
- The Authority and Board are created.
- The Cannabis Equity Reinvestment Board and Fund are created.
- The Cannabis Equity Business Loan Program and Fund are created.
- The Public Health Advisory Council is created.
- The Cannabis Oversight Commission is created.

July 1, 2022

- Localities may begin holding referendums on whether to prohibit retail marijuana stores and must certify such initial referendums by December 31, 2022.
- The Authority may begin to formally adopt regulations after presenting such regulations to the Cannabis Oversight Commission.

January 1, 2023

- The Authority must implement its diversity, equity, and inclusion plan and publish resources to assist social equity applicants by this date.
- The Authority must implement a health, safety, and safe driving campaign by this date.

³⁸ VA. CODE § 4.1-1104, subject to reenactment by the 2022 Session.

³⁹ VA. CODE § 4.1-1105.1.

⁴⁰ VA. CODE § 4.1-1107.

⁴¹ VA. CODE § 4.1-1108.



- Regulations of the Board of Pharmacy governing pharmaceutical processors must transfer to the Authority by this date.

July 1, 2023

- Except for the criminal provisions in Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1 that did not become effective on July 1, 2021, the remainder of the Cannabis Control Act becomes effective on this date; e.g., provisions related to marijuana licenses, issuance and administration of licenses, suspensions and revocations of licenses, penalties for licensees, testing, advertising, and labeling.
- The Authority must have adopted all regulations necessary to implement the legislation by this date.
- The Authority may begin issuing licenses and must give preference to social equity applicants until January 1, 2024.
- Licensees may begin operating but may not yet sell marijuana, marijuana products, immature plants, or marijuana seeds to consumers.

January 1, 2024

- Retail sale of marijuana, marijuana products, immature marijuana plants, and marijuana seeds begins.
- The remaining criminal provisions in Chapter 11 of Title 4.1 become effective and the former counterpart marijuana provisions in Title 18.2 (Crimes and Offenses Generally) are repealed.
- The Cannabis Oversight Commission expires.

IV. Not Subject to Reenactment

While the legislation ultimately passed, a majority of the provisions are subject to reenactment; that is, a majority of the provisions will not become effective unless the General Assembly again votes to pass such provisions during the 2022 Session. Because the legislation amends, creates, or repeals over 200 Code sections and most of these provisions are subject to reenactment, the following is a list of the provisions, whether amended, created, or repealed, that are not subject to reenactment:

- Creation of the Cannabis Equity Reinvestment Board and Fund: Article 29 (§ 2.2-2499.5 et seq.) of Chapter 24 of Title 2.2
- Creation of the Cannabis Control Authority and its Boards: Chapter 6 (§ 4.1-600 et seq.) of Title 4.1
- Creation of the Virginia Cannabis Equity Business Loan Program and Fund: Chapter 15 (§ 4.1-1500 et seq.) of Title 4.1
- Legalization of simple possession and home cultivation and other associated criminal provisions: §§ 4.1-1100 (simple possession of marijuana), 4.1-1101 (home cultivation), 4.1-1101.1 (adult sharing), 4.1-1105.1 (underage possession), 4.1-1107 (open container prohibition), 4.1-1108 (public consumption), 4.1-1109 (possession on school grounds),



4.1-1110 (possession while operating a school bus), 4.1-1112 (possession in vehicle transporting passengers for hire), 4.1-1120 (first-time offender), 4.1-1121 (summons), 4.1-1302 (searches without a warrant), 15.2-1627 (duties of attorney for the Commonwealth), 16.1-69.48:1 (fixed fees for misdemeanors and traffic infractions), 16.1-228 (definitions), 16.1-278.8:01 (juveniles delinquent of first drug offense), 18.2-251.02 (Drug Offender Assessment and Treatment Fund), 18.2-250.1 (repeal of prohibition of marijuana possession), 18.2-308.09 (disqualification for concealed handgun permit), 18.2-308.1:5 (purchase of firearm by persons convicted of certain drug offenses), 24.2-233 (removal of elected officer), 46.2-341.20:7 (possession of marijuana in commercial motor vehicle), and 54.1-3442.6 (permits for pharmaceutical processors)

- Changes to expungement laws: §§ 19.2-389.3 (limits on dissemination of criminal history record information), 19.2-392.1 (policy statement regarding dissemination of arrest records), 19.2-392.2:1 (automatic expungement of former marijuana offenses), 19.2-392.2:2 (petition for expungement of former marijuana offenses), and 19.2-392.4 (prohibited practices by employers, educational institutions, and agencies of state and local governments)
- Enactment clauses 2, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26 of the legislation

V. Conclusion

HB 2312 and SB 1406 are among two of the largest legislative actions passed by the General Assembly in recent years, making Virginia the 16th state to legalize marijuana for adult recreational use. However, while some of the policy decisions in the legislation were signed into law, others remain subject to debate and further approval. Among the items that were approved without any need for further action are the legalization of simple possession and home cultivation of marijuana, significant changes to Virginia's expungement laws, and the creation of the Cannabis Control Authority, Cannabis Equity Reinvestment Board and Fund, and Virginia Cannabis Equity Business Loan Program and Fund.

While the existence and details of the Commonwealth's potential retail marijuana market, among other key issues, are subject to further discussion and will become law only if again acted favorably upon by the General Assembly during the 2022 Session, the laws amended, created, and repealed in the 2021 Session put in place processes and entities to begin executing the vision of the General Assembly with the concurrence of the Governor for the legalization of marijuana for adult recreational use in the Commonwealth.

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