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SENATE BILL NO. 1395

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice on February 3, 2025)

(Patrons Prior to Substitute—Senators Peake and Durant [SB 1266])

A BILL to amend and reenact § 8.01-216.3 and to amend the Code of Virginia by adding a section numbered 18.2-371.2:1, relating to illegal sale of cannabis and tetrahydrocannabinol; possession of retail tobacco products and hemp products intended for smoking by a person younger than 21 years of age prohibited; civil penalties.

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-216.3 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-371.2:1 as follows:

§ 8.01-216.3. False claims; civil penalty.

A. Any person who:

1. Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; 2. Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

3. Conspires to commit a violation of subdivision 1, 2, 4, 5, 6, 7, 8, or 9, or 10;

4. Has possession, custody, or control of property or money used, or to be used, by the Commonwealth and knowingly delivers, or causes to be delivered, less than all such money or property;

5. Has possession, custody, or control of an illegal gambling device, as defined in § 18.2-325, knowing such device is illegal, and knowingly conceals, avoids, or decreases an obligation to pay or transmit money to the Commonwealth that is derived from the operation of such device;

6. Manufactures for sale, sells, or distributes an illegal gaming device knowing that such device is or is intended to be operated in the Commonwealth in violation of Article 1 (§ 18.2-325 et seq.) or Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

7. Except as otherwise permitted by the Cannabis Control Act (§ 4.1-600 et seq.), offers for sale or sells at retail a substance intended for human consumption, orally or by inhalation, that (i) contains a total tetrahydrocannabinol concentration that is greater than 0.3 percent or (ii) contains more than two milligrams of total tetrahydrocannabinol per package and does not contain an amount of cannabidiol that is at least 25 times greater than the amount of total tetrahydrocannabinol per package in violation of § 3.2-4126 or Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

8. Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Commonwealth and, intending to defraud the Commonwealth, makes or delivers the receipt without completely knowing that the information on the receipt is true;

9. Knowingly buys or receives as a pledge of an obligation or debt, public property from an officer or employee of the Commonwealth who lawfully may not sell or pledge the property; or

10. Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Commonwealth or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Commonwealth;

shall be liable to the Commonwealth for a civil penalty of not less than \$10,957 and not more than \$21,916, except that these lower and upper limits on liability shall automatically be adjusted to equal the amounts allowed under the Federal False Claims Act, 31 U.S.C. § 3729 et seq., as amended, as such penalties in the Federal False Claims Act are adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 Note, P.L. 101-410), plus three times the amount of damages sustained by the Commonwealth.

A person violating this section shall be liable to the Commonwealth for reasonable attorney fees and costs of a civil action brought to recover any such penalties or damages. All such fees and costs shall be paid to the Attorney General's Office by the defendant and shall not be included in any damages or civil penalties recovered in a civil action based on a violation of this section.

B. If the court finds that (i) the person committing the violation of this section furnished officials of the Commonwealth responsible for investigating false claims violations with all information known to the person about the violation within 30 days after the date on which the defendant first obtained the information; (ii) such person fully cooperated with any Commonwealth investigation of such violation; (iii) at the time such person furnished the Commonwealth with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to such violation; and (iv) the person did not have actual knowledge of the existence of an investigation into such violation, the court may assess not less than two times the amount of damages that the Commonwealth sustains because of the act of that person. A

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60 person violating this section shall also be liable to the Commonwealth for the costs of a civil action brought
61 to recover any such penalty or damages.

62 C. For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to
63 information, (i) has actual knowledge of the information; (ii) acts in deliberate ignorance of the truth or
64 falsity of the information; or (iii) acts in reckless disregard of the truth or falsity of the information and
65 require no proof of specific intent to defraud.

66 D. Except as provided in subdivision A 5, this section shall not apply to claims, records, or statements
67 relating to state or local taxes.

68 **§ 18.2-371.2:1. Possession of retail tobacco products and hemp products intended for smoking by a**
69 **person younger than 21 years of age prohibited; civil penalties.**

70 A. *No person younger than 21 years of age shall possess any retail tobacco product or hemp product*
71 *intended for smoking, as those terms are defined in § 18.2-371.2. The provisions of this section shall not be*
72 *applicable to the possession of retail tobacco products or hemp products intended for smoking by a person*
73 *younger than 21 years of age (i) making a delivery of retail tobacco products or hemp products intended for*
74 *smoking in pursuance of his employment or (ii) as part of a scientific study being conducted by an*
75 *organization for the purpose of medical research to further efforts in cigarette and tobacco use prevention*
76 *and cessation and tobacco product regulation, provided that such medical research has been approved by an*
77 *institutional review board pursuant to applicable federal regulations or by a research review committee*
78 *pursuant to Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1. This subsection shall not apply to the possession*
79 *of retail tobacco products or hemp products intended for smoking by a law-enforcement officer or his agent*
80 *when the same is necessary in the performance of his duties.*

81 B. *Any retail tobacco product or hemp product intended for smoking, as those terms are defined in §*
82 *18.2-371.2, possessed in a first violation of this section shall be deemed contraband and may be seized by a*
83 *law-enforcement officer. Any such product, the lawful possession of which is not established, seized by such*
84 *officer shall be forfeited and disposed of according to the process described in subdivision A 2 of §*
85 *19.2-386.23. The seizure of such contraband pursuant to this subsection shall be the sole penalty for a first*
86 *violation of this section.*

87 C. *A second violation of this section is punishable by a civil penalty not to exceed \$100 and a third or*
88 *subsequent violation is punishable by a civil penalty not to exceed \$250. A court may, as an alternative to the*
89 *civil penalty, and upon motion of the defendant, prescribe the performance of up to 20 hours of community*
90 *service for a second violation of this section and up to 40 hours of community service for a third or*
91 *subsequent violation. If the defendant fails or refuses to complete the community service as prescribed, the*
92 *court may impose the civil penalty. Upon a violation of this section, the judge may enter an order pursuant to*
93 *subdivision A 9 of § 16.1-278.8.*