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HOUSE BILL NO. 637

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee for Courts of Justice
on _____)

(Patron Prior to Substitute—Delegate Callsen)

A BILL to amend and reenact §§ 3.2-4113, 4.1-1604, 18.2-36.3, 18.2-250, 18.2-251, 18.2-251.03 through 18.2-251.1:3, 18.2-308.1:5, 19.2-327.15, 32.1-45.4, and 54.1-3466 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-250.01, relating to possession of residue of a controlled substance; penalties; exceptions.

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-4113, 4.1-1604, 18.2-36.3, 18.2-250, 18.2-251, 18.2-251.03 through 18.2-251.1:3, 18.2-308.1:5, 19.2-327.15, 32.1-45.4, and 54.1-3466 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-250.01 as follows:

§ 3.2-4113. Production of industrial hemp lawful.

A. It is lawful for a grower, his agent, or a federally licensed hemp producer to grow, a handler or his agent to handle, or a processor or his agent to process industrial hemp in the Commonwealth for any lawful purpose. No federally licensed hemp producer or grower or his agent shall be prosecuted under Chapter 111 (§ 4.1-1100 et seq.) of Title 4.1 or § 18.2-247, 18.2-248, 18.2-248.01, 18.2-248.1, or 18.2-250, or 18.2-250.01, for the possession or growing of industrial hemp or any Cannabis sativa with a tetrahydrocannabinol concentration that does not exceed the total tetrahydrocannabinol concentration percentage established in federal regulations applicable to negligent violations located at 7 C.F.R. § 990.6(b)(3). No handler or his agent or processor or his agent shall be prosecuted under Chapter 111 (§ 4.1-1100 et seq.) of Title 4.1 or § 18.2-247, 18.2-248, 18.2-248.01, 18.2-248.1, or 18.2-250, or 18.2-250.01, or issued a summons or judgment for the possession, handling, or processing of industrial hemp. In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or the Drug Control Act (§ 54.1-3400 et seq.), it shall not be necessary to negate any exception, excuse, proviso, or exemption contained in this article or the Drug Control Act, and the burden of proof of any such exception, excuse, proviso, or exemption shall be on the defendant.

B. Nothing in this article shall be construed to authorize any person to violate any federal law or regulation.

C. No person shall be prosecuted under Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1 or § 18.2-247, 18.2-248, 18.2-248.01, 18.2-248.1, ~~or~~ 18.2-250, *or* 18.2-250.01, for the involuntary growth of industrial hemp through the inadvertent natural spread of seeds or pollen as a result of proximity to a production field, handler's storage site, or process site.

§ 4.1-1604. Criminal liability; exceptions.

No agent or employee of a pharmaceutical processor or cannabis dispensing facility shall be prosecuted under Chapter 11 (§ 4.1-1100 et seq.) or § 18.2-248, 18.2-248.1, or 18.2-250, or 18.2-250.01, 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 chapter and Board regulations 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 chapter and Board regulations.

§ 18.2-36.3. Involuntary manslaughter; certain drug offenses.

A. Any person who knowingly, intentionally, and feloniously manufactures, sells, or distributes a controlled substance knowing that such controlled substance contains a detectable amount of fentanyl, including its derivatives, isomers, esters, ethers, salts, and salts of isomers, in violation of Article 11 (§ 18.2-247 et seq.) of Chapter 7 and unintentionally causes the death of another person is guilty of involuntary manslaughter if (i) such death results from the use of the controlled substance and (ii) such controlled substance is the proximate cause of the death regardless of the time or place death occurred in relation to the commission of the underlying manufacturing, sale, or distribution of a controlled substance that contains a detectable amount of fentanyl, including its derivatives, isomers, esters, ethers, salts, and salts of isomers.

B. It is not a defense to a prosecution under this section that the decedent contributed to his own death by his knowing or voluntary use of the controlled substance. Venue for a prosecution under this section shall lie in the locality where the manufacturing, sale, or distribution of a controlled substance that contains a detectable amount of fentanyl, including its derivatives, isomers, esters, ethers, salts, and salts of isomers, occurred, where the use of the controlled substance occurred, or where death occurred.

60 C. However, if any person proves that he gave or distributed a controlled substance that contains a
61 detectable amount of fentanyl, including its derivatives, isomers, esters, ethers, salts, and salts of isomers, in
62 violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 only as an accommodation to another individual who
63 is not an inmate in a community correctional facility, local correctional facility, or state correctional facility
64 as defined in § 53.1-1 or in the custody of an employee thereof, and not with intent to profit thereby from any
65 consideration received or expected nor to induce the recipient or intended recipient of the controlled
66 substance to use or become addicted to or dependent upon such controlled substance, he ~~shall~~ *is* not be guilty
67 of involuntary manslaughter but is guilty of an accommodation sale punishable as a Class 6 felony.

68 D. No person convicted pursuant to this section for conduct described in subsection A shall be subject to a
69 prosecution for a violation of subsection D of § 18.2-46.6 or § 18.2-248.01, 18.2-250, *18.2-250.01*, or
70 18.2-256 for the same transaction or occurrence.

71 **§ 18.2-250. Possession of controlled substances unlawful; penalties.**

72 A. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the
73 substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while
74 acting in the course of his professional practice, or except as otherwise authorized by the Drug Control Act
75 (§ 54.1-3400 et seq.).

76 Upon the prosecution of a person for a violation of this section, ownership or occupancy of *the* premises
77 or vehicle upon or in which a controlled substance was found shall not create a presumption that such person
78 either knowingly or intentionally possessed such controlled substance.

79 (a) Any person who violates this section with respect to any controlled substance classified in Schedule I
80 or II of the Drug Control Act ~~shall be~~ *is* guilty of a Class 5 felony, except that any
81 person other than an inmate of a penal institution as defined in § 53.1-1 or in the custody of an employee
82 thereof who violates this section with respect to a cannabimimetic agent is guilty of a Class 1 misdemeanor.

83 (b) Any person other than an inmate of a penal institution as defined in § 53.1-1 or in the custody of an
84 employee thereof, who violates this section with respect to a controlled substance classified in Schedule III
85 ~~shall be~~ *is* guilty of a Class 1 misdemeanor.

86 (b1) Violation of this section with respect to a controlled substance classified in Schedule IV shall be
87 punishable as a Class 2 misdemeanor.

88 (b2) Violation of this section with respect to a controlled substance classified in Schedule V shall be
89 punishable as a Class 3 misdemeanor.

90 (c) Violation of this section with respect to a controlled substance classified in Schedule VI shall be
91 punishable as a Class 4 misdemeanor.

92 B. The provisions of this section shall not apply to members of state, federal, county, city, or town
93 law-enforcement agencies, jail officers, or correctional officers, as defined in § 53.1-1, certified as handlers of
94 dogs trained in the detection of controlled substances when possession of a controlled substance or substances
95 is necessary in the performance of their duties.

96 C. *No person shall be prosecuted for a violation of this section for possession of residue of a controlled*
97 *substance in violation of § 18.2-250.01, except as provided in subsection D of § 18.2-250.01.*

98 **§ 18.2-250.01. Possession of residue of a controlled substance unlawful; penalties.**

99 A. *As used in this section, "residue" means a sample of a controlled substance that is too small to be*
100 *weighed accurately.*

101 B. *It is unlawful for any person to knowingly and intentionally possess residue of a controlled substance*
102 *unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a*
103 *practitioner while acting in the course of his professional practice, or except as otherwise authorized by the*
104 *Drug Control Act (§ 54.1-3400 et seq.).*

105 Upon the prosecution of a person for a violation of this section, ownership or occupancy of the premises
106 or vehicle upon or in which residue of a controlled substance was found shall not create a presumption that
107 such person either knowingly or intentionally possessed such residue.

108 C. *A violation of this section is punishable as follows:*

109 1. *Any person who possesses residue of a controlled substance classified in Schedule I or II of the Drug*
110 *Control Act (§ 54.1-3400 et seq.) is guilty of a Class 1 misdemeanor, except that any person other than an*
111 *inmate of a penal institution as defined in § 53.1-1 or in the custody of an employee thereof who violates this*
112 *section with respect to a cannabimimetic agent is guilty of a Class 2 misdemeanor.*

113 2. *Any person other than an inmate of a penal institution as defined in § 53.1-1 or in the custody of an*
114 *employee thereof who possesses residue of a controlled substance classified in Schedule III of the Drug*
115 *Control Act (§ 54.1-3400 et seq.) is guilty of a Class 2 misdemeanor.*

116 3. *Any person who possesses residue of a controlled substance classified in Schedule IV of the Drug*
117 *Control Act (§ 54.1-3400 et seq.) is guilty of a Class 3 misdemeanor.*

118 4. *Any person who possesses residue of a controlled substance classified in Schedule V or VI of the Drug*
119 *Control Act (§ 54.1-3400 et seq.) is guilty of a Class 4 misdemeanor.*

120 D. *This section shall not apply to the knowing and intentional possession of any residue of fentanyl,*
121 *including its isomers, esters, ethers, salts, and salts of isomers, as described in Schedule II of the Drug*

122 *Control Act (§ 54.1-3400 et seq.), except as authorized in the Drug Control Act.*

123 *E. The provisions of this section shall not apply to members of state, federal, county, city, or town law-*
 124 *enforcement agencies, jail officers, or correctional officers, as defined in § 53.1-1, certified as handlers of*
 125 *dogs trained in the detection of controlled substances when possession of an item containing a controlled*
 126 *substance or substances is necessary in the performance of their duties.*

127 **§ 18.2-251. Persons charged with first offense may be placed on probation; conditions; substance**
 128 **abuse screening, assessment treatment and education programs or services; drug tests; costs and fees;**
 129 **violations; discharge.**

130 Whenever any person who has not previously been convicted of any criminal offense under this article or
 131 under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant,
 132 depressant, or hallucinogenic drugs, with the exception of any misdemeanor conviction for possession of
 133 marijuana, *possession of residue of a controlled substance, or possession or distribution of controlled*
 134 *paraphernalia*, or has not previously had a proceeding against him for violation of such an offense dismissed
 135 as provided in this section, except a dismissal of a misdemeanor offense for possession of marijuana, pleads
 136 guilty to or enters a plea of not guilty to possession of a controlled substance under § 18.2-250, the court,
 137 upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of
 138 guilt and with the consent of the accused, may defer further proceedings and place him on probation upon
 139 terms and conditions. If the court defers further proceedings, at that time the court shall determine whether
 140 the clerk of court has been provided with the fingerprint identification information or fingerprints of the
 141 person, taken by a law-enforcement officer pursuant to § 19.2-390, and, if not, shall order that the fingerprints
 142 and photograph of the person be taken by a law-enforcement officer.

143 As a term or condition, the court shall require the accused to undergo a substance abuse assessment
 144 pursuant to § 18.2-251.01 or 19.2-299.2, as appropriate, and enter treatment and/or education program or
 145 services, if available, such as, in the opinion of the court, may be best suited to the needs of the accused based
 146 upon consideration of the substance abuse assessment. The program or services may be located in the judicial
 147 district in which the charge is brought or in any other judicial district as the court may provide. The services
 148 shall be provided by (i) a program licensed by the Department of Behavioral Health and Developmental
 149 Services, by a similar program which is made available through the Department of Corrections, (ii) a local
 150 community-based probation services agency established pursuant to § 9.1-174, or (iii) an ASAP program
 151 certified by the Commission on VASAP.

152 The court shall require the person entering such program under the provisions of this section to pay all or
 153 part of the costs of the program, including the costs of the screening, assessment, testing, and treatment,
 154 based upon the accused's ability to pay unless the person is determined by the court to be indigent.

155 As a condition of probation, the court shall require the accused (a) to successfully complete treatment or
 156 education program or services, (b) to remain drug and alcohol free during the period of probation and submit
 157 to such tests during that period as may be necessary and appropriate to determine if the accused is drug and
 158 alcohol free, (c) to make reasonable efforts to secure and maintain employment, and (d) to comply with a
 159 plan of at least 100 hours of community service for a felony and up to 24 hours of community service for a
 160 misdemeanor. Such testing shall be conducted by personnel of the supervising probation agency or personnel
 161 of any program or agency approved by the supervising probation agency.

162 Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as
 163 otherwise provided. Upon fulfillment of the terms and conditions, and upon determining that the clerk of
 164 court has been provided with the fingerprint identification information or fingerprints of such person, the
 165 court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this
 166 section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section
 167 in subsequent proceedings.

168 Notwithstanding any other provision of this section, whenever a court places an individual on probation
 169 upon terms and conditions pursuant to this section, such action shall be treated as a conviction for purposes of
 170 § 22.1-315. The provisions of this paragraph shall not be applicable to any offense for which a juvenile has
 171 had his license suspended or denied pursuant to § 16.1-278.9 for the same offense.

172 **§ 18.2-251.03. Arrest and prosecution when experiencing or reporting an overdose or act of sexual**
 173 **violence.**

174 A. For purposes of this section:

175 "Act of sexual violence" means an alleged violation of § 18.2-361, 18.2-370, or 18.2-370.1 or the laws
 176 pertaining to criminal sexual assault pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4.

177 "Overdose" means a life-threatening condition resulting from the consumption or use of a controlled
 178 substance, alcohol, or any combination of such substances.

179 B. No individual shall be subject to arrest or prosecution for the unlawful purchase, possession, or
 180 consumption of alcohol pursuant to § 4.1-305, unlawful purchase, possession, or consumption of marijuana
 181 pursuant to § 4.1-1105.1, involuntary manslaughter pursuant to § 18.2-36.3, possession of a controlled
 182 substance pursuant to § 18.2-250, *possession of residue of a controlled substance pursuant to § 18.2-250.01*,
 183 intoxication in public pursuant to § 18.2-388, or possession of controlled paraphernalia pursuant to

184 § 54.1-3466 if:
185 1. Such individual (i) in good faith, seeks or obtains emergency medical attention (a) for himself, if he is
186 experiencing an overdose, or (b) for another individual, if such other individual is experiencing an overdose;
187 (ii) is experiencing an overdose and another individual, in good faith, seeks or obtains emergency medical
188 attention for such individual, by contemporaneously reporting such overdose to a firefighter, as defined in
189 § 65.2-102, emergency medical services personnel, as defined in § 32.1-111.1, a law-enforcement officer, as
190 defined in § 9.1-101, or an emergency 911 system; or (iii) in good faith, renders emergency care or
191 assistance, including cardiopulmonary resuscitation (CPR) or the administration of naloxone or other opioid
192 antagonist for overdose reversal, to an individual experiencing an overdose while another individual seeks or
193 obtains emergency medical attention in accordance with this subdivision;

194 2. Such individual remains at the scene of the overdose or at any alternative location to which he or the
195 person requiring emergency medical attention has been transported until a law-enforcement officer responds
196 to the report of an overdose. If no law-enforcement officer is present at the scene of the overdose or at the
197 alternative location, then such individual shall cooperate with law enforcement as otherwise set forth herein;

198 3. Such individual identifies himself to the law-enforcement officer who responds to the report of the
199 overdose; and

200 4. The evidence for the prosecution of an offense enumerated in this subsection was obtained as a result of
201 the individual seeking or obtaining emergency medical attention or rendering emergency care or assistance.

202 C. No individual shall be subject to arrest or prosecution for the unlawful purchase, possession, or
203 consumption of alcohol pursuant to § 4.1-305, unlawful purchase, possession, or consumption of marijuana
204 pursuant to § 4.1-1105.1, possession of a controlled substance pursuant to § 18.2-250, *possession of residue*
205 *of a controlled substance pursuant to § 18.2-250.01*, intoxication in public pursuant to § 18.2-388, or
206 possession of controlled paraphernalia pursuant to § 54.1-3466 if:

207 1. Such individual, in good faith, seeks or obtains assistance for himself or another individual from
208 emergency medical services personnel, as defined in § 32.1-111.1, a health care provider, as defined in
209 § 8.01-581.1, or a law-enforcement officer, as defined in § 9.1-101, and seeks to report an act of sexual
210 violence committed against himself or another individual;

211 2. Such individual identifies himself to the law-enforcement officer who responds to the report of the act
212 of sexual violence; and

213 3. The evidence for the prosecution of an offense enumerated in this subsection was obtained as a result of
214 the individual seeking or obtaining medical attention, rendering care or assistance, or reporting to law
215 enforcement.

216 This subsection shall not apply to an individual who is alleged to have committed the act of sexual
217 violence.

218 D. The provisions of this section shall not apply to any person who seeks or obtains emergency medical
219 attention for himself or another individual, to a person experiencing an overdose or who has experienced an
220 act of sexual violence when another individual seeks or obtains emergency medical attention for him, or to a
221 person who renders emergency care or assistance to an individual experiencing an overdose or who has
222 experienced an act of sexual violence while another person seeks or obtains emergency medical attention
223 during the execution of a search warrant or during the conduct of a lawful search or a lawful arrest.

224 E. This section does not establish protection from arrest or prosecution for any individual or offense other
225 than those listed in subsection B or C. However, any individual immune to arrest or prosecution under this
226 section shall not have his bail, probation, furlough, supervised release, suspended sentence, or parole revoked
227 for the behavior immune from arrest or prosecution under the provisions of this section.

228 F. No law-enforcement officer acting in good faith shall be found liable for false arrest if it is later
229 determined that the person arrested was immune from prosecution under this section.

230 **§ 18.2-251.1. Possession or distribution of marijuana for medical purposes permitted.**

231 A. No person shall be prosecuted under § 18.2-250, 18.2-250.01, or § 18.2-250.1 for the possession of
232 marijuana or tetrahydrocannabinol when that possession occurs pursuant to a valid prescription issued by a
233 medical doctor in the course of his professional practice for treatment of cancer or glaucoma.

234 B. No medical doctor shall be prosecuted under § 18.2-248 or § 18.2-248.1 for dispensing or distributing
235 marijuana or tetrahydrocannabinol for medical purposes when such action occurs in the course of his
236 professional practice for treatment of cancer or glaucoma.

237 C. No pharmacist shall be prosecuted under §§ § 18.2-248 to, 18.2-248.01, 18.2-248.05, or 18.2-248.1 for
238 dispensing or distributing marijuana or tetrahydrocannabinol to any person who holds a valid prescription of
239 a medical doctor for such substance issued in the course of such doctor's professional practice for treatment of
240 cancer or glaucoma.

241 **§ 18.2-251.1:1. Possession or distribution of cannabis oil; public schools.**

242 No school nurse employed by a local school board, person employed by a local health department who is
243 assigned to the public school pursuant to an agreement between the local health department and the school
244 board, or other person employed by or contracted with a local school board to deliver health-related services
245 shall be prosecuted under Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1 or § 18.2-248, 18.2-248.1, 18.2-250,

246 18.2-250.01, or 18.2-255 for the possession or distribution of cannabis oil for storing, dispensing, or
 247 administering cannabis oil, in accordance with a policy adopted by the local school board, to a student who
 248 has been issued a valid written certification for the use of cannabis oil in accordance with § 4.1-1601.

249 **§ 18.2-251.1:2. Possession or distribution of cannabis oil; nursing homes and certified nursing
 250 facilities; hospice and hospice facilities; assisted living facilities.**

251 No person employed by a nursing home, hospice, hospice facility, or assisted living facility and
 252 authorized to possess, distribute, or administer medications to patients or residents shall be prosecuted under
 253 Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1 or § 18.2-248, 18.2-248.1, or 18.2-250, or 18.2-250.01, for the
 254 possession or distribution of cannabis oil for the purposes of storing, dispensing, or administering cannabis
 255 oil to a patient or resident who has been issued a valid written certification for the use of cannabis oil in
 256 accordance with § 4.1-1601.

257 **§ 18.2-251.1:3. Possession or distribution of cannabis oil, or industrial hemp; laboratories;
 258 Department of Agriculture and Consumer Services, Department of Law employees.**

259 A. No person employed by an analytical laboratory to retrieve, deliver, or possess cannabis oil or
 260 industrial hemp samples from a permitted pharmaceutical processor, a registered industrial hemp grower, a
 261 federally licensed hemp producer, or a registered industrial hemp processor for the purpose of performing
 262 required testing shall be prosecuted under Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1 or § 18.2-248,
 263 18.2-248.1, 18.2-250, 18.2-250.01, or 18.2-255 for the possession or distribution of cannabis oil or industrial
 264 hemp or for storing cannabis oil or industrial hemp for testing purposes in accordance with regulations
 265 promulgated by the Board of Pharmacy and the Board of Agriculture and Consumer Services.

266 B. No employee of the Department of Agriculture and Consumer Services or of the Department of Law
 267 shall be prosecuted under § 18.2-247, 18.2-248, 18.2-248.01, 18.2-248.1, or 18.2-250, or 18.2-250.01, for the
 268 possession or distribution of industrial hemp or any substance containing tetrahydrocannabinol when
 269 possession of industrial hemp or any substance containing tetrahydrocannabinol is necessary in the
 270 performance of his duties.

271 **§ 18.2-308.1:5. Purchase or transportation of firearm by persons convicted of certain drug offenses
 272 prohibited.**

273 Any person who, within a 36-consecutive-month period, has been convicted of two misdemeanor offenses
 274 under Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1, subsection B of former § 18.2-248.1:1, or § 18.2-250 or
 275 18.2-250.01, shall be ineligible to purchase or transport a handgun. However, upon expiration of a period of
 276 five years from the date of the second conviction and provided the person has not been convicted of any such
 277 offense within that period, the ineligibility shall be removed.

278 **§ 19.2-327.15. Definitions.**

279 As used in this chapter, unless the context requires a different meaning:

280 "Labor trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person
 281 for labor or services through the use of force, fraud, or coercion for the purpose of subjection to debt
 282 bondage, involuntary servitude, peonage, or slavery.

283 "Qualifying offense" means a conviction or adjudication of delinquency for any attempted, completed, or
 284 conspired (i) violation of § 18.2-250 or 18.2-250.01, or (ii) misdemeanor violation of § 18.2-96, 18.2-102, or
 285 18.2-103; subsection A of § 18.2-108; § 18.2-108.01, 18.2-117, 18.2-118, 18.2-119, 18.2-137, 18.2-146,
 286 18.2-147, 18.2-160.2, 18.2-173, 18.2-178, 18.2-181, or 18.2-186.2; subdivision B 1 of § 18.2-186.3;
 287 § 18.2-195, 18.2-197, 18.2-206, 18.2-258, 18.2-266.1, 18.2-346, 18.2-347, 18.2-349, 18.2-388, 18.2-415,
 288 46.2-300, or 46.2-301; or subdivision A 1, 2, or 3 of § 46.2-346.

289 "Sex trafficking" means the recruitment, harboring, transportation, provision, obtaining, patronizing, or
 290 soliciting of a person for the purpose of a commercial sex act that is induced by force, fraud, or coercion or in
 291 which the person induced to perform such act has not attained 18 years of age.

292 "Victim of human trafficking" means any person subjected to an act or the practice of labor trafficking or
 293 sex trafficking, regardless of whether any other person has been charged or convicted of an offense related to
 294 the labor trafficking or sex trafficking of such person.

295 **§ 32.1-45.4. Comprehensive harm reduction programs.**

296 A. The Commissioner or his designee may authorize the director of a local department of health, or any
 297 other organization that promotes scientifically proven methods of mitigating health risks associated with drug
 298 use and other high-risk behaviors, to establish and operate local or regional comprehensive harm reduction
 299 programs that include the provision of sterile hypodermic needles and syringes and disposal of used
 300 hypodermic needles and syringes. The objectives of such programs shall be to (i) reduce the spread of HIV,
 301 viral hepatitis, and other blood-borne diseases in the Commonwealth; (ii) reduce the transmission of blood-
 302 borne diseases through needlestick injuries to law-enforcement and other emergency personnel; (iii) provide
 303 information to individuals who inject drugs regarding addiction recovery treatment services and encourage
 304 such individuals to participate in evidence-based substance use treatment programs; (iv) prevent opioid
 305 overdose deaths through distribution of naloxone or other opioid antagonists; and (v) incentivize the safe
 306 return and disposal of hypodermic needles and syringes. Comprehensive harm reduction programs
 307 established by the Commissioner pursuant to this section shall be operated by local health departments or

308 affiliated organizations with which the Department contracts.

309 B. A comprehensive harm reduction program established pursuant to this section shall include (i) the
310 disposal of used hypodermic needles and syringes; (ii) the provision of hypodermic needles and syringes and
311 other injection supplies at no cost and in quantities sufficient to ensure that needles, hypodermic syringes, and
312 other injection supplies are not shared or reused; (iii) reasonable and adequate security of program sites,
313 equipment, and personnel; (iv) the provision of educational materials concerning (a) substance use disorder
314 prevention, (b) overdose prevention, (c) the prevention of transmission of HIV, viral hepatitis, and other
315 blood-borne diseases, (d) available mental health treatment options, including referrals for mental health
316 treatment, and (e) available substance use disorder treatment options, which shall include options for
317 medication assisted treatment of substance use disorder, including referrals for treatment; (v) access to
318 overdose prevention kits that contain naloxone or other opioid antagonist approved by the U.S. Food and
319 Drug Administration for opioid overdose reversal; (vi) individual harm reduction counseling, including
320 individual consultations regarding appropriate mental health or substance use disorder treatment; and (vii)
321 verification that a hypodermic needle or syringe or other injection supplies were obtained from a
322 comprehensive harm reduction program established pursuant to this section.

323 C. The director of a local health department or representative of any other organization authorized to
324 establish a comprehensive harm reduction program pursuant to this section shall notify the Department, in a
325 manner and form specified by the Department, of his intent to establish a comprehensive harm reduction
326 program. Such notice shall include (i) the name of the local health department or organization that will
327 operate the comprehensive harm reduction program, (ii) a description of the geographic area and population
328 to be served by the comprehensive harm reduction program, and (iii) a description of the methods by which
329 the comprehensive harm reduction program will comply with the requirements of subsection B, including a
330 written security plan that provides for the reasonable and adequate security of the comprehensive harm
331 reduction program site, equipment, and personnel.

332 D. Written security plans required pursuant to clause (iii) of subsection C shall be filed annually with each
333 local law-enforcement agency serving the jurisdiction in which the comprehensive harm reduction program is
334 located for their consideration.

335 E. The provisions of §§ 18.2-250, 18.2-250.01, 18.2-265.3, and 54.1-3466 shall not apply to a person who
336 dispenses or distributes hypodermic needles and syringes as part of a comprehensive harm reduction program
337 established pursuant to this section.

338 F. The provisions of §§ 18.2-250, 18.2-250.01, 18.2-265.3, and 54.1-3466 relating to possession of a
339 controlled substance, *residue of a controlled substance*, drug paraphernalia, and controlled paraphernalia
340 shall not apply to any person acting on behalf or for the benefit of a comprehensive harm reduction program
341 when such possession is incidental to the provision of services as part of a comprehensive harm reduction
342 program established pursuant to this section.

343 G. The provisions of §§ 18.2-250, 18.2-250.01, 18.2-265.3, and 54.1-3466 relating to possession of a
344 controlled substance, *residue of a controlled substance*, drug paraphernalia, and controlled paraphernalia
345 shall not apply to any person receiving services from a comprehensive harm reduction program established
346 pursuant to this section, when (i) such controlled substance is a residual amount contained in a used needle,
347 used hypodermic syringe, or used injection supplies obtained from or returned to a comprehensive harm
348 reduction program established pursuant to this section, or (ii) such paraphernalia is obtained from a
349 comprehensive harm reduction program established pursuant to this section, as evidenced by the verification
350 required pursuant to clause (vii) of subsection B.

351 H. Every local health department or other organization operating a comprehensive harm reduction
352 program pursuant to this section shall report annually by July 1 to the Department regarding, for the previous
353 calendar year, (i) the number of individuals served by the comprehensive harm reduction program; (ii) the
354 number of needles, hypodermic syringes, and other injection supplies distributed by the comprehensive harm
355 reduction program; (iii) the number of overdose prevention kits described in clause (v) of subsection B
356 distributed by the comprehensive harm reduction program; and (iv) the number and type of referrals to
357 mental health or substance use disorder treatment services provided to individuals served by the
358 comprehensive harm reduction program, including the number of individuals referred to programs that
359 provide naloxone or other opioid antagonists approved by the U.S. Food and Drug Administration for opioid
360 overdose reversal.

361 I. Except in the case of a comprehensive harm reduction program established by the Commissioner, no
362 state funds shall be used to purchase needles or hypodermic syringes distributed by a comprehensive harm
363 reduction program established pursuant to this section.

364 **§ 54.1-3466. Possession or distribution of controlled paraphernalia; definition of controlled
365 paraphernalia; evidence; exceptions; penalty.**

366 A. For purposes of this chapter, "controlled paraphernalia" means (i) a hypodermic syringe, needle, or
367 other instrument or implement or combination thereof adapted for the administration of controlled dangerous
368 substances by hypodermic injections under circumstances that reasonably indicate an intention to use such
369 controlled paraphernalia for purposes of illegally administering any controlled drug or (ii) gelatin capsules,

370 glassine envelopes, or any other container suitable for the packaging of individual quantities of controlled
371 drugs in sufficient quantity to and under circumstances that reasonably indicate an intention to use any such
372 item for the illegal manufacture, distribution, or dispensing of any such controlled drug. Evidence of such
373 circumstances shall include, but not be limited to, close proximity of any such controlled paraphernalia to any
374 adulterants or equipment commonly used in the illegal manufacture and distribution of controlled drugs
375 including scales, sieves, strainers, measuring spoons, staples and staplers, or procaine hydrochloride,
376 mannitol, lactose, quinine, or any controlled drug, or any machine, equipment, instrument, implement,
377 device, or combination thereof that is adapted for the production of controlled drugs under circumstances that
378 reasonably indicate an intention to use such item or combination thereof to produce, sell, or dispense any
379 controlled drug in violation of the provisions of this chapter. "Controlled paraphernalia" does not include
380 drug checking products used to determine the presence or concentration of a contaminant that can cause
381 physical harm or death.

382 B. Except as authorized in this chapter, it is unlawful for any person to possess controlled paraphernalia.

383 C. Except as authorized in this chapter, it is unlawful for any person to distribute controlled paraphernalia.

384 D. A violation of this section is a Class 1 misdemeanor.

385 E. The provisions of this section shall not apply to persons who have acquired possession and control of
386 controlled paraphernalia in accordance with the provisions of this article or to any person who owns or is
387 engaged in breeding or raising livestock, poultry, or other animals to which hypodermic injections are
388 customarily given in the interest of health, safety, or good husbandry; or to hospitals, physicians, pharmacists,
389 dentists, podiatrists, veterinarians, funeral directors and embalmers, persons to whom a permit has been
390 issued, manufacturers, wholesalers, or their authorized agents or employees when in the usual course of their
391 business, if the controlled paraphernalia lawfully obtained continue to be used for the legitimate purposes for
392 which they were obtained.

393 F. The provisions of this section and of § 18.2-265.3 shall not apply to (i) a person who dispenses
394 naloxone in accordance with the provisions of subsection Z of § 54.1-3408 and who, in conjunction with such
395 dispensing of naloxone, dispenses or distributes hypodermic needles and syringes for injecting such naloxone
396 or (ii) a person who possesses naloxone that has been dispensed in accordance with the provisions of
397 subsection Z of § 54.1-3408 and possesses hypodermic needles and syringes for injecting such naloxone in
398 conjunction with such possession of naloxone.

399 G. The provisions of this section and of § 18.2-265.3 shall not apply to (i) a person who possesses or
400 distributes controlled paraphernalia on behalf of or for the benefit of a comprehensive harm reduction
401 program established pursuant to § 32.1-45.4 or (ii) a person who possesses controlled paraphernalia obtained
402 from a comprehensive harm reduction program established pursuant to § 32.1-45.4.

403 H. *No person shall be prosecuted for a violation of this section for possession of residue of a controlled*
404 *substance in violation of § 18.2-250.01 except as provided in subsection D of § 18.2-250.01.*