

Hemp Product Legislation (2023)

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Hemp Product Legislation SB 903 (Hanger) & HB 2294 (Kilgore)

- House and Senate passed the substitute recommended by the Conference Committee
- Governor Youngkin offered an amendment in the nature of a substitute on March 27
- House and Senate passed the Governor's substitute at the Reconvened Session on April 12

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2023 Hemp Product Legislation

- Establishes new THC caps for hemp products, when offered for retail sale
 - May not exceed 0.3 percent total THC (natural or synthetic)
and
 - May not have more than two milligrams of total THC per package, unless the product has at least 25 parts of CBD for every one part of THC
- Exempts industrial hemp extracts acquired by a permitted pharmaceutical processor from a registered industrial hemp handler or processor from these THC caps
- Amends Code of Virginia to assess a substance containing THC using the substance's total THC (rather than delta-9 THC, as in existing law)

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2023 Hemp Product Legislation

- Establishes a regulated hemp product retail facility registration
 - Program administered by the Dept of Agriculture and Consumer Services (VDACS)
 - May not offer for retail sale a regulated hemp product without a retail registration
 - Regulated hemp product: an inhaled hemp product or an edible hemp product
 - Annual registration fee: \$1,000
 - Effective date: When Commissioner certifies VDACS has established the registration program

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2023 Hemp Product Legislation

- Packaging, labeling, and testing requirements for regulated hemp products (Industrial Hemp Law) and industrial hemp extracts (Food and Drink Law)
(Most are existing Consumer Protection Act requirements for substances containing THC.)
 - If the product contains THC, must be in child-resistant packaging
 - Labeling must include ingredients, amount that constitutes a single serving, total percentage and milligrams of THC

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Hemp Product Legislation

- Packaging, labeling, and testing requirements for regulated hemp products (Industrial Hemp Law) and industrial hemp extracts (Food and Drink Law)
(Most are existing Consumer Protection Act requirements for substances containing THC.)
 - When offered for sale, must be accompanied by a certificate of analysis (COA) that is produced by an independent lab that is ISO accredited. COA must state the total THC concentration of the substance or the total THC concentration of the batch from which the substance originates. Retailer must have a copy of the testing lab's certificate of accreditation to the ISO standard (*new requirement*).

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2023 Hemp Product Legislation

- Packaging, labeling, and testing requirements for regulated hemp products (Industrial Hemp Law) and industrial hemp extracts (Food and Drink Law)
(Most are existing Consumer Protection Act requirements for substances containing THC.)
 - May not be in the shape of a human, animal, vehicle, or fruit
 - Unauthorized use of a trademark or famous mark on packaging is prohibited

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2023 Hemp Product Legislation

- Amends the Industrial Hemp Law to establish a civil penalty for selling a regulated hemp product in violation of:
 - THC caps
 - Packaging, labeling, testing requirements
 - Retail registration requirement

Up to \$10,000 for each day a violation occurs

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2023 Hemp Product Legislation

➤ Amends the Food and Drink Law to establish a civil penalty for manufacturing or selling an industrial hemp extract or a food containing an industrial hemp extract in violation of:

- THC caps
- Packaging, labeling, testing requirements
- Food permit requirement, if such is required

Up to \$10,000 for each day a violation occurs

➤ Amends the Food and Drink Law to establish a Class 1 misdemeanor for manufacturing or selling an industrial hemp extract or a food containing an industrial hemp extract in violation of the law

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2023 Hemp Product Legislation

➤ Amends the Industrial Hemp Law and the Consumer Protection Act to require that topical hemp products bear a label stating that the product is not intended for human consumption

➤ May sell product without this label if such was manufactured prior to July 1, 2023, and provide documentation of date of manufacture

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2023 Hemp Product Legislation

- Amends the Consumer Protection Act (VCPA) to:
 - Prohibit the sale of a substance intended for human consumption, orally or by inhalation, that contains a synthetic derivative of THC.
 - Establish an increased civil penalty of not more than \$5,000 per violation for second or subsequent willful violations of the THC-related provisions in the VCPA

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2023 Hemp Product Legislation

- Amends the Consumer Protection Act (VCPA) to:
 - Authorize the Commissioner of Agriculture and Consumer Services to inquire into violations of the THC-related provisions in the VCPA.
 - Authorize the Board of Directors of the Virginia Cannabis Control Authority (CCA) to, upon referral or request of the Attorney General or VDACS, inquire into violations of the THC-related provisions in the VCPA.

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2023 Hemp Product Legislation

- Amends the Drug Control Act to:
 - Replace “delta-9 tetrahydrocannabinol” with “tetrahydrocannabinol”
 - De-schedule “tetrahydrocannabinol”
 - Establish that an THC isomer, ester, ether, salt or salts of such isomer, ester, or ether scheduled pursuant to the Drug Control Act is not “marijuana,” as defined in the Code.

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2023 Hemp Product Legislation

- Requires two reports to the Governor and General Assembly by November 1, 2023.
 - VDACS must report on enforcement actions taken pursuant to the Food and Drink Law that pertain to industrial hemp extracts.
 - CCA must (i) study edible hemp products and hemp products intended for smoking, (ii) report on the approaches taken by other states to address the public safety and health challenges posed by the online and in-person sale of hemp-derived products, and (iii) provide a recommendation as to whether the Commonwealth may benefit from adopting one or more of these approaches or another approach. In this report, the CCA shall also provide a summary and the implications of any pending federal legislation on hemp-derived products.

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