



Virginia Cannabis Regulation Law Summary

Virginia's HB 2312 and SB 1406 (which are identical) will replace cannabis prohibition with a system to legalize, tax, and regulate cannabis for adults 21 and older. The legislation also includes automatic sealing of low-level past cannabis offenses, establishes a social equity program to promote participation in the legal cannabis industry from those hardest hit by the war on cannabis, and dedicates 30% of tax revenue to a Cannabis Equity Reinvestment Fund.

HB 2312/SB 1406 passed the House and Senate in final votes on February 27, 2021. Gov. Ralph Northam requested amendments from the legislature, which voted to approve them on April 7.

Many — but not all — of the law's provisions require a second legislative vote in 2022, or “re-enactment.” The provisions to legalize cannabis possession and cultivation on July 1, 2021 do not require re-enactment, nor do penalties for minors possessing cannabis and provisions to allow the regulatory work to start. The provisions to begin the regulatory process and to legalize sales on January 1, 2024 also do not require re-enactment. Most new penalties — such as for bringing any cannabis into Virginia — do require re-enactment, as do regulatory details.

Adult-Use Legal Possession and Cultivation

Beginning July 1, 2021:

- Adults who are 21 or older could possess up to one ounce of cannabis, or the equivalent amount of cannabis products, and could share the same amount with other adults.
- Adults could securely and discreetly cultivate up to four cannabis plants at their primary residence. (The four-plant cap also applies to households.) Each plant must have a tag with identifying information on the grower.

- Possessing more than an ounce, but no more than one pound, would be punishable by a civil fine of up to \$25.
- Possessing more than one pound could result in up to 1-10 years in prison.

Prohibited Conduct

Beginning January 1, 2024:

- Public consumption carries a civil fine of up to \$25 for a first offense. A second offense requires a substance abuse program. Subsequent offenses are fine-only misdemeanors.
- Minors possessing cannabis would be subject to a civil fine of up to \$25 plus a required substance abuse education program.
- Possessing cannabis on school grounds would carry up to six months in jail.
- Consuming cannabis in a moving motor vehicle would be a fine-only misdemeanor.*
- Bringing any cannabis into Virginia would be punishable by up to a year in jail.*

**This penalty would have to be reviewed and re-approved by the legislature in 2022.*

Shielding and Non-Discrimination for Past Convictions

- The bill automatically shields from public inspection records of misdemeanor cannabis convictions. Employers, landlords, insurance companies, and educational institutions generally may not require an applicant to disclose information for any automatically shielded charge. Individuals need not disclose any shielded conviction.

State Regulation and Licensing, Inclusion, and Equity

A new Cannabis Control Authority would be created in July 2021 to regulate the adult-use cannabis market. A five-member Board of Directors would issue regulations; grant, suspend, or revoke licenses; and issue fines.

- The Board would establish the number of licensees, which could not exceed 400 retailers, 25 wholesalers, 450 cultivators, and 60 product manufacturers. Those figures would not count existing medical cannabis businesses and hemp

processors. It would also approve labs. It creates two types of cultivation licenses: Class A licenses, which are capped at a certain number of square feet or plants. Class B would be limited to 1% THC.

- It will also establish criteria to evaluate new licensees based on the density of retail stores in the community and to consider any negative public health outcomes in the community.
- Vertical integration (owning multiple types of cannabis businesses) would not be allowed except in the case of:
 - Microbusinesses
 - Existing medical cannabis businesses, all of which are vertically integrated, and hemp processors may be vertically integrated if they: 1) pay a \$1 million fee to the Virginia Cannabis Equity Loan Fund and the Virginia Cannabis Equity Reinvestment Fund; and 2) the business submits a diversity, equity, and inclusion plan to the Cannabis Business Equity and Diversity Support Team and implements it or provides job training services to persons recently incarcerated.
- Stores must be geographically dispersed. Their dispersion must be reassessed after every 100 licenses are issued.
- Promotes inclusion in licensing by prioritizing social equity applicants.
 - The bill defines “social equity applicants” as having 66% or more owners who: have a prior cannabis conviction, have a close relative with a cannabis conviction, live either in an area with disproportionate cannabis arrests or that is economically distressed, or graduated from a Virginia HBCU.
 - Social equity applicants will be given preference from July 1, 2023 until January 1, 2024. Regulators will waive a percent of fees.
- Creates a Cannabis Business Equity and Diversity Support Team to identify barriers to inclusion, offer technical assistance, conduct outreach, and develop requirements for diversity, equity, and inclusion plans.
- A new 21-member Cannabis Public Health Advisory Council would assess and monitor public health impacts and make recommendations, including about warnings cannabis products’ safety and product composition and public health awareness.
- The bill includes requirements for seed-to-sale tracking, packaging, and labeling — including for potency and mandating warning labels — and requires state-

created information on risks to be available at the point-of-sale. Delivery, internet-based sales,

- Rules would govern outdoor cultivation, sanitation, testing, and advertising.
- Regulators would also establish public health and safety guidelines for personal home cultivation, including to protect children and prevent nuisances, including odor.
- Edibles would be limited to five milligrams per serving and 50 milligrams per package.

Timeline

- Most of the bill — including legal possession — will take effect on July 1, 2021. (The current penalty for possession of up to an ounce is a civil fine of up to \$25.)
- Sales would begin no earlier than January 1, 2024.

Local Role

- Licensing would be entirely at the state level.
- Localities can determine hours and implement zoning and land use rules.
- Localities can also opt out of retail stores by voter referendum.

Fees, Taxation, and Revenue

- A state tax of 21% at the point of retail sale would be levied, in addition to standard 6% sales taxes. The tax does not apply to medical cannabis sales from medical dispensaries.
- Localities could impose a tax of up to 3% on sales to consumers in the municipality.
- Fees would be determined by the Board and can be increased based on inflation.
- After covering regulatory costs, the revenue would be allocated to: pre-K education for at-risk children (40%); a Cannabis Equity Reinvestment Fund (30%); substance abuse treatment and prevention (25%); and public health programs (5%).
- The Cannabis Equity Reinvestment Fund, administered by a 20-member Cannabis Equity Reinvestment Board, would direct funds to:

- Scholarship programs for historically marginalized populations, including those who were in foster care and who have been impacted by substance use;
- Grants to support jobs training and placement, workplace development, youth mentoring, and reentry services;
- Contributing to the state's Indigent Defense Fund; and
- No- and low-interest loans for social equity applicants.