



***Out of the
Mouths—and
Hands—of Babies:
Navigating
Virginia's Hemp
Product Regulatory
Landscape***

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First, the terminology



Cannabis
a genus of flowering plants



THC-A
a cannabinoid found naturally in cannabis



apply heat and THC-A transforms to



THC
a psychoactive agent

Know the terminology

- Hemp classifies varieties of cannabis that contain $<.3\%$ THC
- Hemp generally describes non-intoxicating cannabis harvested for industrial use of its derived products
- Hemp is grown widely in Virginia (Va. Code § 3.2-4113)

Know the terminology

- Marijuana classifies varieties of cannabis that contain $>.3\%$ THC
- Can induce psychotropic or euphoric effects on user
- Cannabis is used as a term for many edible, inhalable, topical or other kinds of products

THC vs CBD: What's the Difference?

Cannabidiol (CBD) and Tetrahydrocannabinol (THC) are both derived from the same plant species, *Cannabis sativa* L. Although they do share some similarities, including the same chemical formula, the two chemicals have several key differences due to their biological arrangements.

	CBD	THC
Psychotropic		✓
Found in greater concentrations in hemp	✓	
Found in greater concentrations in marijuana		✓
Federally legal to sell and consume products	✓ *	
Legal to possess and consume products in Virginia	✓	✓ **

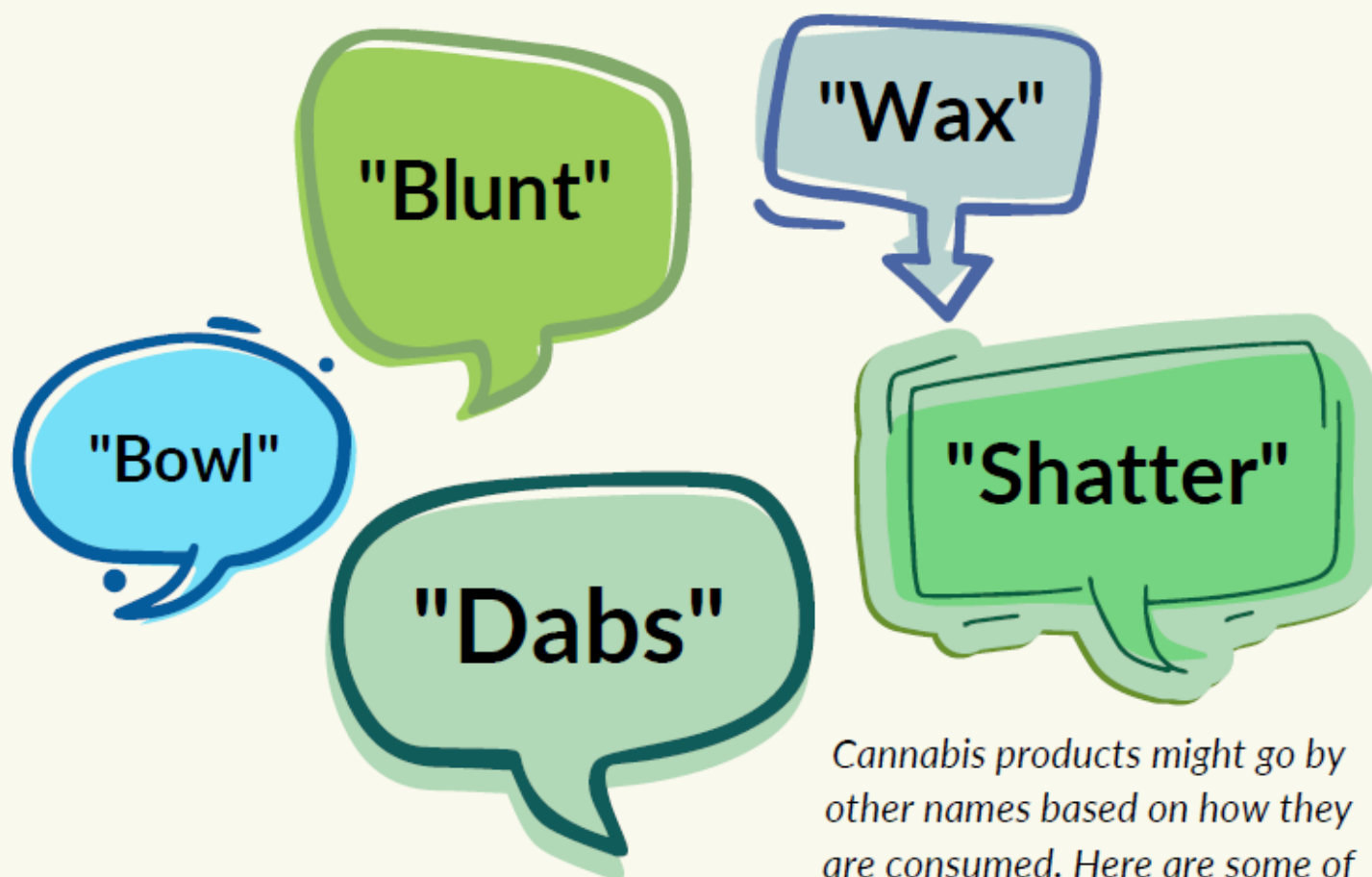
* As hemp extract

** It is legal to possess up to 1oz of marijuana in Virginia.



Revised 9.30.22



Many different products come from the cannabis plant, not just those most commonly known as marijuana. CBD and products containing substances like Delta-8, Delta-10, and THC-O are appearing more frequently in Virginia.



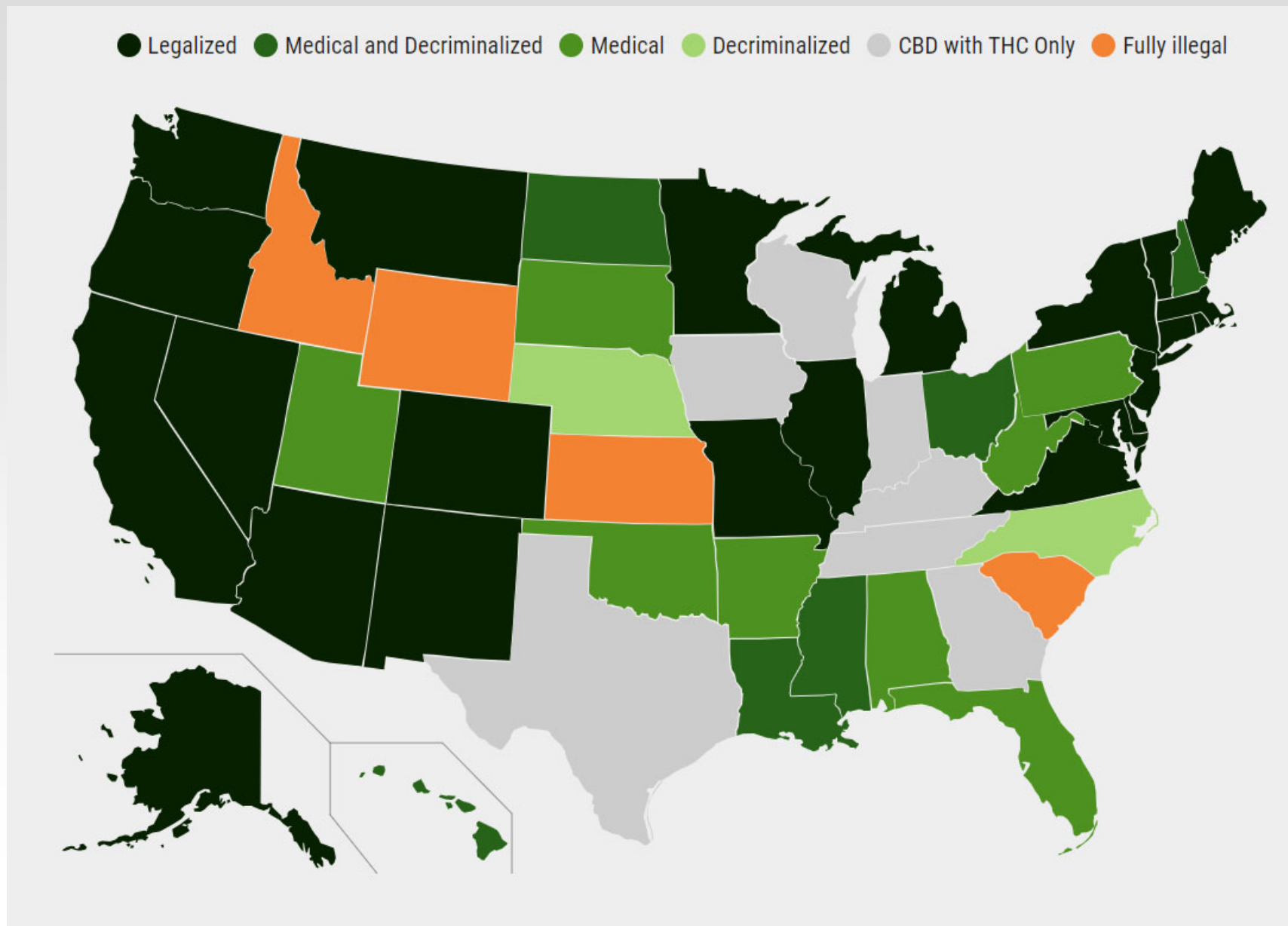
Cannabis products might go by other names based on how they are consumed. Here are some of the ones you might hear.

What is it called?	What can it look like?	What is it?
THC		<p>THC, or <i>tetrahydrocannabinol</i>, is the primary psychoactive component in cannabis. In most cases, people use THC to refer to delta-9 THC, which usually causes cannabis' intoxicating effect. Other types of THC can have similar effects. THC can also be extracted from cannabis, and products made with THC in its concentrated form can be strong.</p>
CBD		<p>CBD, or <i>cannabidiol</i>, is a compound in cannabis frequently used in topicals, oils, inhalants, and edibles. CBD is nonintoxicating when used in normal doses. Parents should consult with a healthcare provider before determining if their child should use CBD products. Children should not use any CBD product unless under a parent's supervision, as it can have side effects like other over-the-counter drug products.</p>

What is it called?	What can it look like?	What is it?
Cannabinoid Hemp/ Delta-8		<p>Cannabinoid hemp products like Delta-8, Delta-10, and THC-O are usually made with extractions from legally grown hemp. Cannabinoid hemp products have been sold in convenience stores and vape shops and are often intoxicating. Like traditional cannabis products, it is not legal for those under 21 years of age to purchase or consume intoxicating hemp products in Virginia.</p>

What is the law around the country?

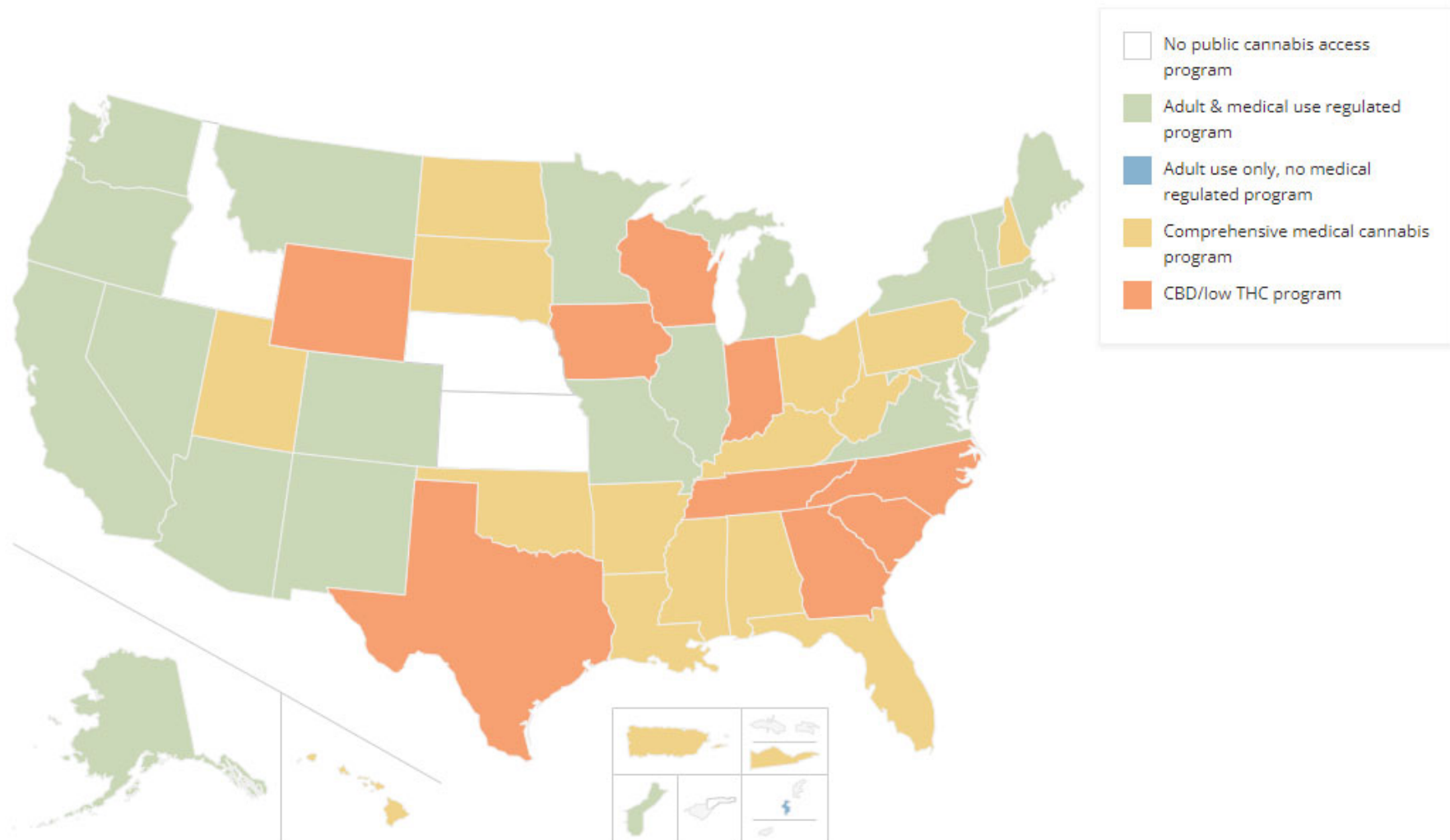




Marijuana legality by state
<https://disa.com/marijuana-legality-by-state>

State Regulated Cannabis Programs

Switch View ▼



Our neighbors

State (click state name to jump to program information)	Statutory Language (year)	Patient Registry or ID cards	Allows Dispensaries	Specifies Conditions	Recognizes Patients from other states	State Allows for Retail Sales/Non Medical Adult Use
District of Columbia	Initiative 59 (Passed by voters but blocked by the Barr Amendment in 1998) L18-0210 or Act B18-622 (2010)	Yes	Yes	Yes		Yes. Initiative 71 (2014)

State (click state name to jump to program information)	Statutory Language (year)	Patient Registry or ID cards	Allows Dispensaries	Specifies Conditions	Recognizes Patients from other states	State Allows for Retail Sales/Non Medical Adult Use
					dispensaries.	
Maryland	HB 702 (2003) SB 308 (2011) HB 180/SB 580 (2013) HB 1101-Chapter 403 (2013) SB 923 (signed 4/14/14) HB 881 - similar to SB 923	Yes	Yes	Yes	No	Yes. Question 4 (2022)



**Virginia
agency
involvement**



Some background about the Virginia landscape

- In 2019 the General Assembly passed three laws clarifying the right to use CBD and THC oils
- Practically any Virginia retailer, including many convenience stores, gas stations and smoke shops, could—and did—sell hemp-derived ingestible products, such as edibles and tinctures

Three markets emerged



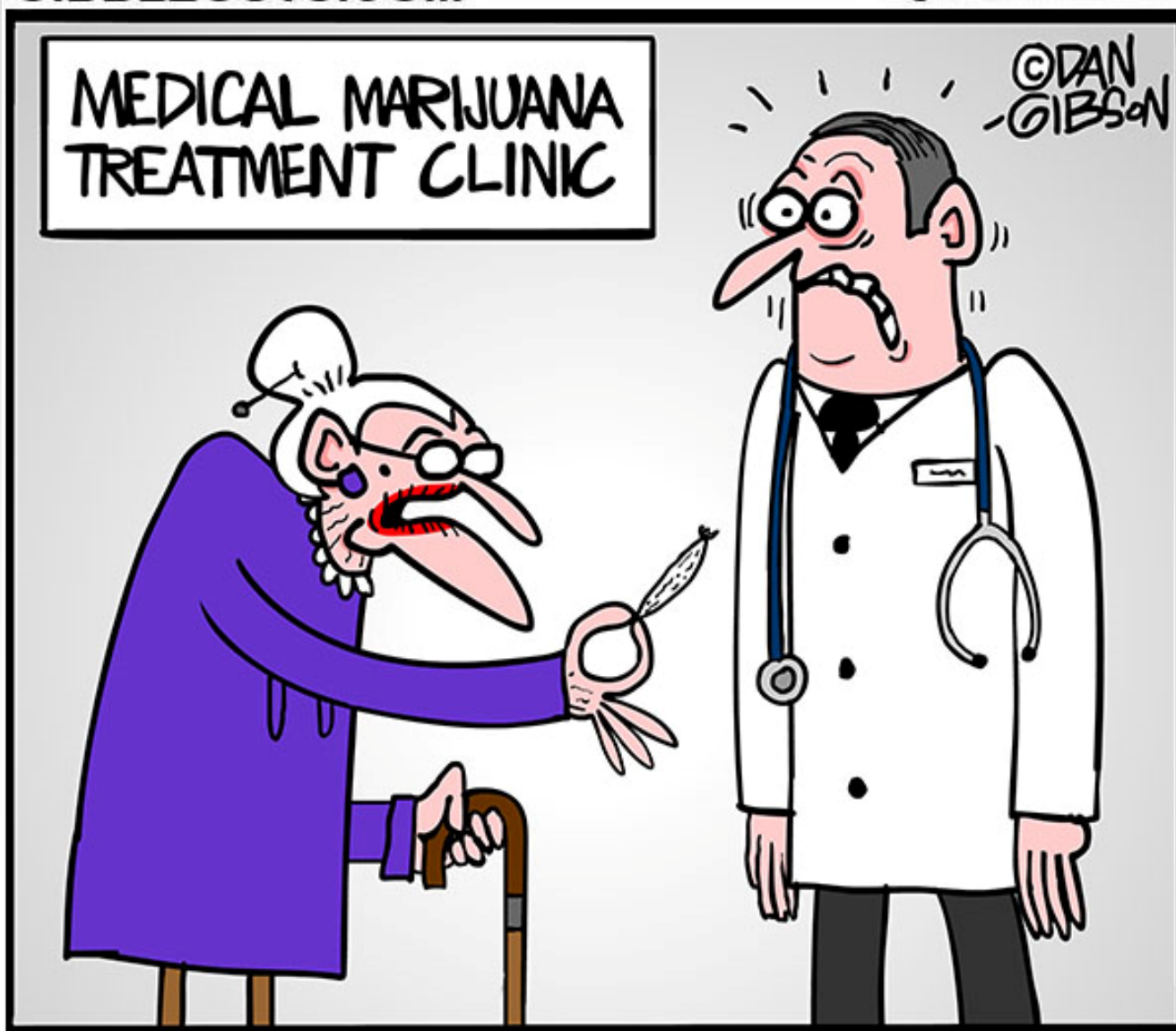
A diagram on the left side of the slide features three circles of increasing size, connected by a light blue line. The top circle is white, the middle one is light gray, and the bottom one is black. Each circle is positioned to the left of a corresponding text box.

Medical market

Gray market, hemp-derived products

Black market, marijuana

Virginia's marijuana sales hit \$2.4B this year, all but 1% sold illegally, according to the Richmond Times-Dispatch



These paper suppositories you've been giving me are really hard to insert.

Virginia has a regulated medical cannabis program accessible to qualifying patients. Patients must live in Virginia, be 18 years of age or older, have a valid government-issued identification, and have a condition that may benefit from the use of cannabis. Patients must obtain a written certification from a licensed practitioner before going to a licensed facility. Parents/legal guardians can get a written certification on behalf of a minor or vulnerable adult.

In Virginia, it is illegal for people under 21 years of age to have or use cannabis. Those under 21-years-old who possess cannabis may face fines and/or be required to enter a substance abuse treatment program or an education program. Supplying cannabis to those under 21 years old is a criminal offense which can carry severe punishments, increasing in severity based on the amount provided. Driving under the influence of cannabis is a crime and is subject to the same penalties as any other form of DUI. There is no legal retail market for purchasing cannabis in Virginia.



***2023 General Assembly amended the Virginia Code
to establish new requirements and restrictions
for certain hemp-derived products***

- Industrial Hemp Law §3.2-4112 et seq.
- Food and Drink Law §3.2-5100 et seq.
- Virginia Consumer Protection Act
§359.1-196 et seq.

Why?



- Intent is to keep intoxicating products such as Delta 8 and other THC products out of the hands of kids due to “rise of accidental THC poisonings in children”
- Packaging mimics popular products and is attractive to youth
- Easily accessible via retail outlets







An image of a Delta-8 THC product included in a presentation to a state hemp task force by the Blue Ridge Poison Center.

The legislative path forward

- Any hemp products for sale must contain 25 times as much CBD as THC
- Goal to limit THC without intentionally banning the sale of CBD products, which typically contain trace amounts of THC
- Hemp industry advocates warn law penalizes hemp farmers and will push consumers to black market and force some small retailers to close

Effective July 1, 2023

- All synthetic products eliminated, including Delta-8, Delta-10 THC products
- Products above the 25:1 threshold must now be regulated as marijuana products that can only be lawfully sold in medical marijuana dispensaries
 - However, some CBD therapeutics, or edibles, used for sleeping aids and epilepsy are more potent than the 25:1 CBD:THC ratio

- Many products seen in gas stations, convenience stores and vape shops have become illegal

Effective July 1, 2023

- Packaging and labeling requirements
 - Packaging must be child resistant
 - Label must disclose amount of THC per package and serving, and be accompanied by certification of analysis from independent lab
- Retailers must register with state enforcement agency to sell any consumable hemp-derived products



COMMONWEALTH of VIRGINIA

Department of Agriculture and Consumer Services

PO Box 1163, Richmond, Virginia 23218

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Joseph W. Guthrie
Commissioner

TO: Food manufacturers, distributors, retail food establishments
Industrial hemp registrants

FROM: Virginia Department of Agriculture and Consumer Services

DATE: June 15, 2023

RE: 2023 Hemp Product Legislation

EXISTING RULES

Anyone processing industrial hemp into a hemp product, regardless of what the product is or how the product is consumed, must have an Industrial Hemp Processor Registration.

Industrial hemp extracts intended for human consumption orally must be manufactured and sold in compliance with the Food and Drink Law and regulations adopted pursuant thereto.

- Must meet the Food and Drink Law's definition of "industrial hemp extract" (Va. Code § 3.2-5145.1).
- Must be manufactured in a facility inspected by the food regulatory authority.
- Must comply with 2 VAC 5-595, *Regulations Governing the Manufacturing and Sale of Products that Contain Industrial Hemp Extracts Intended for Human Consumption*. This regulation includes requirements such as:
 - Contaminant testing
 - Batch identification
 - Labeling requirements
- A Food Permit is required to manufacture these products. A Food Permit may be required to sell these products.

The sale of substances intended to be consumed orally or by inhalation that contain THC that are not marijuana, as defined in Virginia's Criminal Code, must comply with the Virginia Consumer Protection Act.

- May not be sold to a person younger than 21 years of age.
- Must have child-resistant packaging.
- Must have label that states:
 - That the substance contains THC and may not be sold to persons younger than 21 years of age;
 - All ingredients contained in the substance;
 - The amount of such substance that constitutes a single serving; and
 - The total percentage and milligrams of THC included in the substance and the number of milligrams of THC that are contained in each serving.
- Must be accompanied by a certificate of analysis, produced by an independent laboratory that is ISO/IEC 17025 accredited, that states the THC concentration of the substance or the THC concentration of the batch from which the substance originates.
- May not be in the shape of a human, animal, vehicle, or fruit.
- May not be in packaging that bears a trademark or famous mark that the seller is not authorized to use.

NEW FOOD AND DRINK LAW REQUIREMENTS FOR AN INDUSTRIAL HEMP EXTRACT OR FOOD OR DRINK CONTAINING AN INDUSTRIAL HEMP EXTRACT THAT BECOME EFFECTIVE ON JULY 1, 2023

- Industrial hemp extracts and food containing an industrial hemp extract, when offered for retail sale, may not exceed 0.3 percent total THC and may not have more than two milligrams of total THC per package unless the product's cannabidiol (CBD) to THC ratio is at least 25 parts CBD to one part THC.
 - "Total THC" means all of the THC in a product, including delta-8, delta-9 THC, and any other forms of THC.
- Any person who intends to manufacture, sell, or offer for sale a substance intended to be consumed orally that contains an industrial hemp-derived cannabinoid must submit an Edible Hemp Products Disclosure Form.
- Must be in child-resistant packaging, if it contains THC.
 - "Child-resistant" means, with respect to packaging or a container, (i) specially designed or constructed to be significantly difficult for a typical child under five years of age to open and not to be significantly difficult for a typical adult to open and reseal and (ii) for any product intended for more than a single use or that contains multiple servings, resealable.
- Must be equipped with a label that states, in English and in a font no less than 1/16 of an inch:
 - All ingredients contained in the industrial hemp extract or food containing an industrial hemp extract;
 - The amount of such industrial hemp extract or food containing an industrial hemp extract that constitutes a single serving;
 - The number of milligrams of total THC per serving and number of milligrams and percent of total THC per package, if it contains THC;
 - The industrial hemp extract or food containing an industrial hemp extract contains THC and may not be sold to persons younger than 21 years of age, if it contains THC.
- When offered for sale, must be accompanied by a certificate of analysis that:
 - Is produced by an independent laboratory that is ISO/IEC 17025 accredited, and
 - States the total THC concentration of the substance or the total THC concentration of the batch from which the substance originates.
- The certificate of accreditation to standard ISO/IEC 17025 issued by the third-party accrediting body to the independent laboratory shall be available for review at the location at which the industrial hemp extract or food containing an industrial hemp extract is offered for sale or sold.
- Potential penalties for failing to comply with the Food and Drink Law:
 - Denial, revocation, or suspension of your Food Permit
 - Class 1 misdemeanor
 - Civil penalty of up to \$10,000 each day a violation occurs

VIRGINIA CONSUMER PROTECTION ACT (VCPA) REQUIREMENTS FOR SUBSTANCES CONTAINING THC THAT BECOME EFFECTIVE ON JULY 1, 2023

- May not sell a substance intended for human consumption, orally or by inhalation, that contains a synthetic derivative of THC.
- May not sell a topical hemp product that does not include a label stating that the product is not intended for human consumption.
 - Allowed to sell a topical hemp product that was manufactured prior to July 1, 2023, provided that the seller provides documentation of the date of manufacture if requested.
- Potential penalties for failing to comply with the VCPA:
 - Civil penalty of up to \$2,500 per violation
 - Civil penalty of up to \$5,000 for a second or subsequent violation of the THC-related provisions in the VCPA
 - Denial, suspension, or revocation of your Food Permit

- Regulated Hemp Product Retail Facility Registration will become effective at a **future date**
 - Virginia Department of Agriculture and Consumer Services to implement this requirement
 - Difficult to enforce minimum-age laws, testing and packing standards without this aspect
 - Most likely target is food products that contain THC, such as gummies

INDUSTRIAL HEMP LAW REQUIREMENTS THAT BECOME EFFECTIVE AT A FUTURE DATE*

(*These requirements will become effective when the Commissioner of the Department of Agriculture and Consumer Services (VDACS) provides notice to the Virginia Code Commission that VDACS has established the registration process necessary to implement these requirements.)

- Must have a Regulated Hemp Product Retail Facility Registration in order to sell a hemp product intended for smoking or an edible hemp product.
 - Annual registration fee: \$1,000
 - Registration required for each location that offers for retail sale a hemp product intended for smoking or an edible hemp product.
- Hemp products intended for smoking when offered for retail sale, must be:
 - Contained in child-resistant packaging, as defined in § 4.1-600, if it contains THC.
 - "Child-resistant" means, with respect to packaging or a container, (i) specially designed or constructed to be significantly difficult for a typical child under five years of age to open and not to be significantly difficult for a typical adult to open and reseal and (ii) for any product intended for more than a single use or that contains multiple servings, resealable.
 - Equipped with a label that states, in English and in a font no less than 1/16 of an inch:
 - a. All ingredients contained in the substance;
 - b. The amount of such substance that constitutes a single serving;
 - c. The total percentage and milligrams of all THC's included in the substance and the total number of milligrams of all THC's that are contained in each serving; and
 - d. That the product may not be sold to persons younger than 21 years of age, if it contains THC.
- Accompanied by a certificate of analysis produced by a laboratory accredited to ISO/IEC 17025 that states the total THC concentration of the substance or the total THC concentration to ISO/IEC 17025 of the batch from which the substance originates. The certificate of accreditation issued by a third-party accrediting body to the laboratory shall be available for review at the location at which the product is offered for sale.
- Potential penalty for failing to comply with the provisions of the Industrial Hemp Law related to regulated hemp products:
 - Civil penalty of up to \$10,000 each day a violation occurs



Legal challenge to block stricter hemp laws

- Lawsuit filed in September by two hemp businesses and a private citizen
- Suit alleges
 - the state THC limit is more strenuous than federal standards
 - the rules cause financial harm to hemp businesses and interfere in interstate commerce





CHRISTIAN & BARTON, LLP
ATTORNEYS AT LAW

This is provided as an informational service and does not constitute legal counsel or advice, which can only be rendered in the context of specific factual situations.

If a legal issue should arise, please retain the assistance of competent legal counsel.

Thank You



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