



# **Exploring Cannabis in the Commonwealth**

Patrice Lewis & Greg Habeeb



# Road to Legalization

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# Medical Marijuana



**1979**

Medical Marijuana for Treatment of Certain Diseases (§18.2-251.1)



**2015**

Adds Epilepsy to Certain Diseases Treated by Medical Marijuana (§54.1-3408.3)



**2017**

Pharmaceutical Permit Processors (PPPs) (§54.1-3442.6)



**2018**

Removes Restriction on Qualifying Diseases for Use of Medical Marijuana (§18.2-250.1; 54.1-3408.3)

# Industrial Hemp



**2015**

Production &  
Manufacturing of  
Industrial Hemp by  
Universities  
(§3.2-4112-4120)



**2018**

Registered Hemp  
Growers,  
Processors, and  
Dealers  
(§3.2-4112-4121)



**2020**

Approval of  
Industrial Hemp  
Extract as Food  
Ingredient  
(§3.2-5145.1-.5)

# Recreational Marijuana



**2020**

Decriminalization of  
Simple Possession

(§18.2-250.1)



**2021**

Legalization of  
Simple Possession,  
Adult Sharing,  
Home Cultivation

(§4.1-1100;  
1101;1101.1)

A close-up photograph of cannabis buds and a dab rig. The buds are green and brown, with some trichomes visible. The dab rig is made of clear glass and has a small amount of yellowish liquid inside. The background is a plain, light-colored surface.

# 2021 Cannabis Control Act



**283  
Pages**

# 2021 Cannabis Control Act: The Goals



- Establish a full-scale legal commercial cannabis market by 2024.
  - Create four license categories: cultivation (450), processing (60), wholesale (25), and retail (400).
  - Allow individuals to possess small amounts of marijuana and cultivate up to four plants at home.
  - Establish the Virginia Cannabis Control Authority (VCCA) as an independent authority responsible for issuing regulations, approving licenses, and enforcement.
  - Provide for restrictions on vertical integration and anti-labor activity.
  - Allow localities to hold a referendum to ban retail sales in their area.
  - Protect geographic disbursement and social equity in the licensure process.
  - Establish a tax rate of at least 21%, with a 3% local option.
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# Possession & Public Consumption

Va. Code §4.1-1100; 1108

- A person 21 years of age or older may possess up to 1 oz. of marijuana or equivalent amount of product in any public place.
  - 4 oz. - 1 lb. - Class 3 misdemeanor (NEW).
  - > 1 lb. - Punishable by imprisonment between 1-10 years and/or a fine of not more than \$250,000.
- No person shall consume or offer marijuana/marijuana product to another in public.
- Still no definition for "equivalent amount of marijuana product."

# Home Cultivation

Va. Code §4.1-1101

- A person 21 years of age or older may cultivate up to 4 marijuana plants for personal use in their main place of residence.\*
- The person shall:
  - Ensure that no plant is visible from a public way without the use of aircraft, binoculars, or other optical aids.
  - Take precautions to prevent unauthorized access by persons under 21.
  - Attach a legible tag that includes name, driver's license or ID number, and notation that the plant is for personal use.
  - Not manufacture marijuana concentrate.
    - The owner of a property, parcel, or tract of land may not intentionally or knowingly allow the manufacture of marijuana concentrate.

\*A "household" means those individuals, whether related or not, who live in the same house or other place of residence.

# Adult Sharing

Va. Code §4.1-1101.1; 1103

- Adult sharing is the transfer of marijuana between persons who are 21 years or older without remuneration.
- Adult sharing does not include instances in which:
  - Marijuana is given away contemporaneously with another reciprocal transaction between the same parties.
  - A gift of marijuana is offered or advertised in conjunction with an offer for the sale of goods or services.
  - A gift of marijuana is contingent upon a separate reciprocal transaction for goods or services.
- No civil or criminal penalty may be imposed for adult sharing of marijuana/marijuana product up to 1 oz.

# Virginia Cannabis Control Authority

(Va. Code §4.1-601-605)

- Board of Directors (Va. Code §4.1-607)
  - Comprised of 5 members appointed by Governor.
  - Serve for 5 years and no more than 2 consecutive terms.
  - Directors cannot hold cannabis licenses during tenure.
- Establishes the number of licenses, criteria to evaluate new licensees, weighs public health outcomes, and approves labs.
- The Board has the power to grant, suspend, or revoke licenses for the cultivation, manufacture, distribution, sale, and testing of marijuana and marijuana products.



**Funding Reduced**



## **Appointees:**

- Jorge Figueredo, MPP
- Amari Harris, Esq.
- W. Anthony West
- Sheba Williams

## **Funding Deferred**

## **Board**

- Vernon Green Jr.
- Dr. Nancy Toscano
- Dr. Cassandra L. Newby-Alexander

*Chaired by Angela Sailor, Chief Diversity, Opportunity, and Inclusion Officer to Governor Youngkin*

# Appointees:

- Ngiste Abebe
- Dr. Larry Keen II, PhD
- Cynthia Morrow, MD, MPH
- Marcus Treiber
- Karin Addison

## Funding Deferred

# Council

- Paul Kalchbrenner
- Michael Gillette
- Jimmy Christmas

*Chaired by John Littel, Secretary of Health & Human Resources to Governor Youngkin*

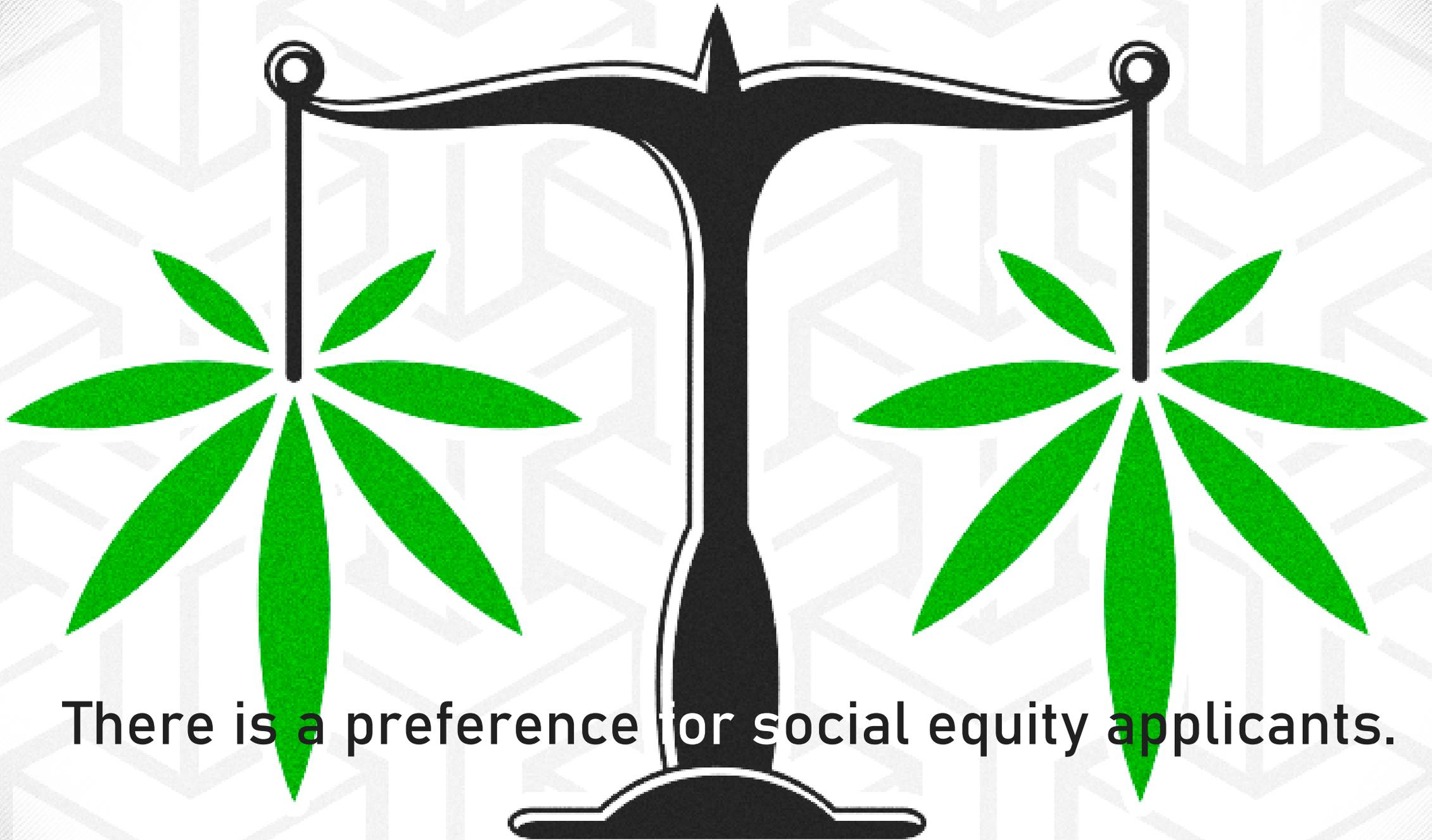
# **Members: Cannabis Oversight Commission**

- Sen. Adam Ebbin (D-Alexandria), *Chair*
- Del. Charniele Herring (D-Alexandria)
- Del. Nick Freitas (R-Culpeper)
- Del. Dawn Adams (D-Richmond)
- Del. Margaret Ransone (R-King George)
- Del. Jay Leftwich (R-Chesapeake)
- Del. Jeff Campbell (R-Wythe)
- Sen. Jennifer McClellan (D-Richmond)
- Sen. Ryan McDougale (R-Hanover)
- Sen. Jeremy McPike (D-Manassas)

# Licensee Exemptions

(Va. Code §4.1-700)

- Licensure requirements shall not apply to:
  - Pharmaceutical Permit Processors/Cannabis Dispensing Facilities.
  - **Registered Hemp Dealers, Processors, or Growers.**
  - Registered manufacturers of industrial hemp extract or food containing industrial hemp extract.
  - Home Cultivators.



**There is a preference for social equity applicants.**

**"It only seems right that those who have been disadvantaged at least have the opportunity to participate in this new industry."**

*-Sen. Adam Ebbin (D-Alexandria)*



**"Decriminalizing marijuana is an important step in mitigating racial disparities in the criminal justice system."**

*-House Minority Leader Charniele Herring (D)*

# Social Equity in CCA

- The CCA contained numerous provisions aimed at promoting social equity including:
  - Loan programs and community reinvestment
  - Sealing and expungement of certain criminal records
  - Preferences in the licensure process
- A Social Equity Applicant is a resident of the Commonwealth with at least 66% ownership in a business and who either:
  - Was convicted of a misdemeanor marijuana crime
  - Has a close family member who was convicted of a misdemeanor marijuana crime
  - Lives in an area disproportionately policed for marijuana crimes
  - Lives in an economically distressed area
  - Graduated from a Virginia HBCU

A locality may, by resolution, petition the circuit court for the locality for a referendum on the question of whether retail marijuana stores should be prohibited in the locality.

# Local Referenda

(Va. Code § 4.1-629)

"Shall the operation of retail marijuana stores be prohibited in \_\_\_\_?"





**The goal was to continue the work and reenact the CCA in 2022.**



**But then...**

# 2021 Election

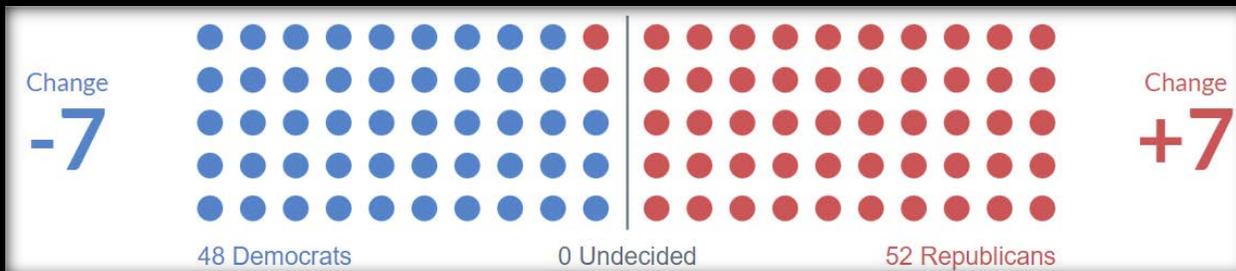
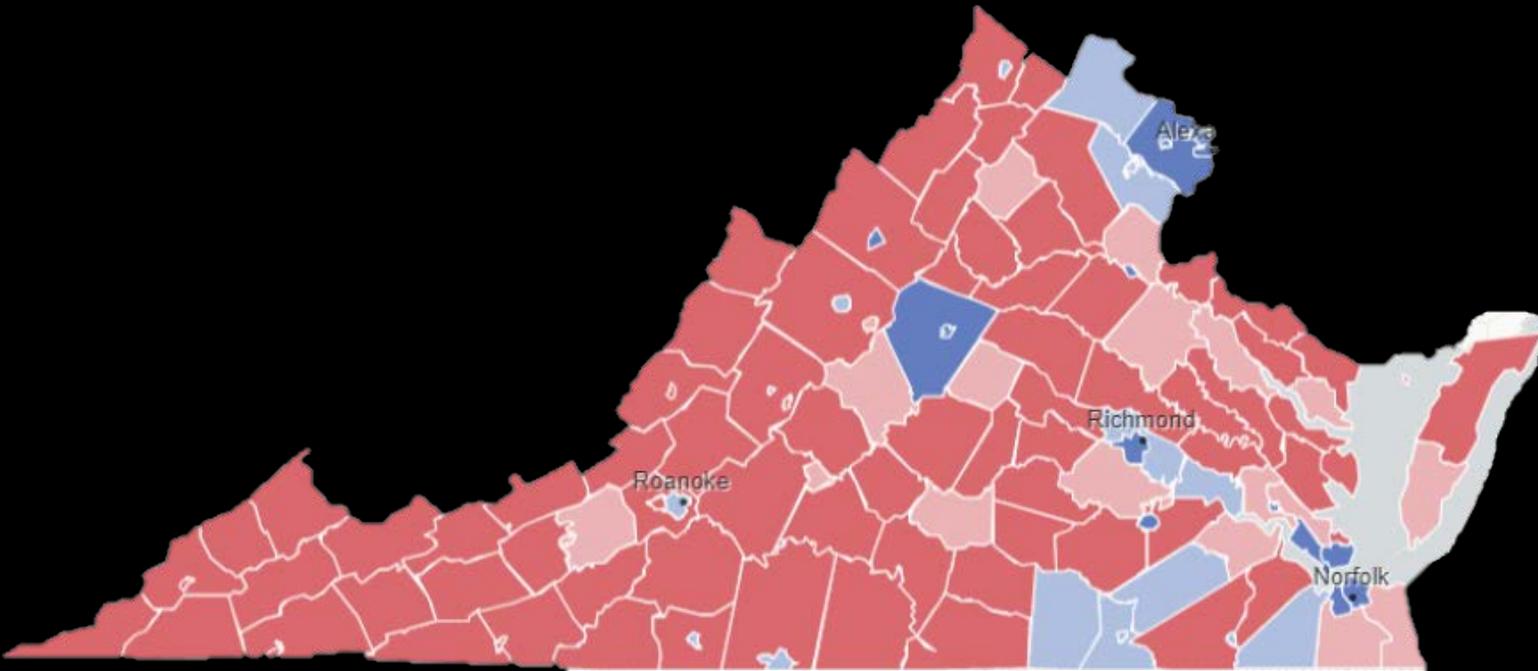


# YOUNGKIN

## GOVERNOR

In November 2021, Republicans secured a full sweep of the offices of Governor, Lieutenant Governor, Attorney General and now hold a majority in the House of Delegates.

# 2021 Election



- Virginia's rural localities fought back after 8 years of Democratic control.
- Areas that were reliably blue faltered and cost McAuliffe his race.
- Power shifts from urban centers, to rural and suburban areas.
- Senate remains in control of Democrats.



**2022 Session**





House Minority Leader  
Eileen Filler-Corn  
(D-Fairfax)



House Dem. Caucus Chair  
Charniele Herring  
(D-Alexandria)



Speaker of the House  
Todd Gilbert  
(R-Shenandoah)



House Majority Leader  
Terry Kilgore  
(R-Scott)

## Changing House Leadership



**Senate leadership stayed the same.**

# Marijuana Legislation Introduced

- ...HB 43 Retail marijuana stores; requirement for local ...
- ...HB 72 Marijuana cultivation facility licenses; prohib...
- ...HB 176 Cannabis control; vertical integration, social ...
- ...HB 211 Cannabis products; retail sale by certain pharm...
- ...HB 287 Cannabis; replaces the term "marijuana" through...
- ...HB 301 Virginia Cannabis Control Authority; membership...
- ...HB 361 Marijuana; allowing access to, purchase for, or...
- ...HB 430 Cannabis control; retail market, penalties.
- ...HB 461 Employee protections; medicinal use of cannabis...
- ...HB 875 Cannabis Equity Reinvestment Board, etc.; membe...
- ...HB 897 Hemp products; regulation.
- ...HB 933 Pharmaceutical processors; amends the definitio...
- ...HB 950 Cannabis control; retail market, penalties.
- ...HB 1192 Marijuana cultivation facility licenses; prefer...
- ...HB 1202 Conformity with the Internal Revenue Code; cann...
- ...HB 1348 Marijuana-related offenses; creates writ of pos...
- ...SB 107 Marijuana tax; revenue allocations.
- ...SB 313 Cannabis products; retail sale by certain pharm...
- ...SB 391 Cannabis control; retail market.
- ...SB 542 Cannabis products; written certification for th...
- ...SB 591 Marijuana; shape productions, definitions.
- ...SB 621 Cannabis products; retail sales by certain phar...
- ...SB 671 Pharmaceutical processors; amends the definitio...
- ...SB 672 Pharmacists and pharmacy technicians; prescribi...
- ...SB 702 Marijuana; criminal history information, disclo...
- ...SB 772 Cannabis; definitions, dispensing products, pat...

# 2022 Cannabis Control Act: the Goals



- Allow PPPs to enter the market before January 1, 2024, if they pay \$6 million to VCCA.
  - Allow industrial hemp processors to vertically integrate if they pay \$500,000, submit a DEI plan, are registered prior to March 31, 2021, and processed no less than 40,000 lbs. of hemp.
  - Institute canopy caps for PPPs and industrial hemp cultivators.
  - Require early PPPs and hemp processors to incubate five social equity applicants.
  - Allow the CCA Board to set number of licenses per category but cap retail licenses at 400.
  - Limit vertical integration to small businesses and ensure that all licensees have an equal and meaningful opportunity to participate in the market.
  - Allow local referenda for any category of cannabis license.
  - Provide interim criminal penalties for possession between 1 ounce and 1 pound.
  - Allow home cultivators to manufacture marijuana concentrate from their own plants.
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A group of approximately 20 people, including men and women in professional attire, are standing in a large, ornate room with high ceilings and wood paneling. They are arranged in two rows, with some standing behind a curved wooden desk or bench. The room has a patterned carpet and several large, upholstered chairs. A large, semi-transparent black box with white text is overlaid in the center of the image.

**Senate Democrats attempted to reenact the Cannabis Control Act, but Republicans continued the bill to 2023.**

# Marijuana Legislation Passed

- ...HB 43 Retail marijuana stores; requirement for local ...
- ...HB 72 Marijuana cultivation facility licenses; prohib...
- ...HB 176 Cannabis; integration, social ...
- ...HB 211 Cannabis; certain pharm...
- ...HB 212 Cannabis; retail sales through...
- ...HB 213 Cannabis Control; membership...
- ...HB 214 Cannabis; allowing access to, p...
- ...HB 215 Cannabis; control; retail market, pen...
- ...HB 216 Cannabis; definitions; medicinal use o...
- ...HB 275 Cannabis; Reinvestment Board, e...
- ...HB 2897 Hemp; cultivation.
- ...HB 2933 Pharmaceutical processors; amends the d...
- ...HB 2950 Cannabis control; retail market, penalties...
- ...HB 31192 Marijuana cultivation; licenses;
- ...HB 3202 Conformity with the state revenue...
- ...HB 3348 Marijuana-related offe...
- ...HB 3349 Marijuana tax; revenue allo...
- ...HB 3350 Cannabis products; retail sale...
- ...SB 54 Cannabis; retail sale...
- ...SB 54 Cannabis; retail sale...
- ...SB 591 Marijuana; definitions.
- ...SB 621 Cannabis products; retail sales by certain phar...
- ...SB 671 Pharmaceutical processors; amends the definitio...
- ...SB 672 Pharmacists and pharmacy technicians; prescribi...
- ...SB 702 Marijuana; criminal history information, disclo...
- ...SB 772 Cannabis; definitions, dispensing products, pat...

# 2022 Cannabis Control Act: the Reality



- Right back where we started:
    - Simple Possession
    - Adult Sharing
    - Home Cultivation
    - Virginia Cannabis Control Authority
  - No legal market, no referenda, no timeline...
- 



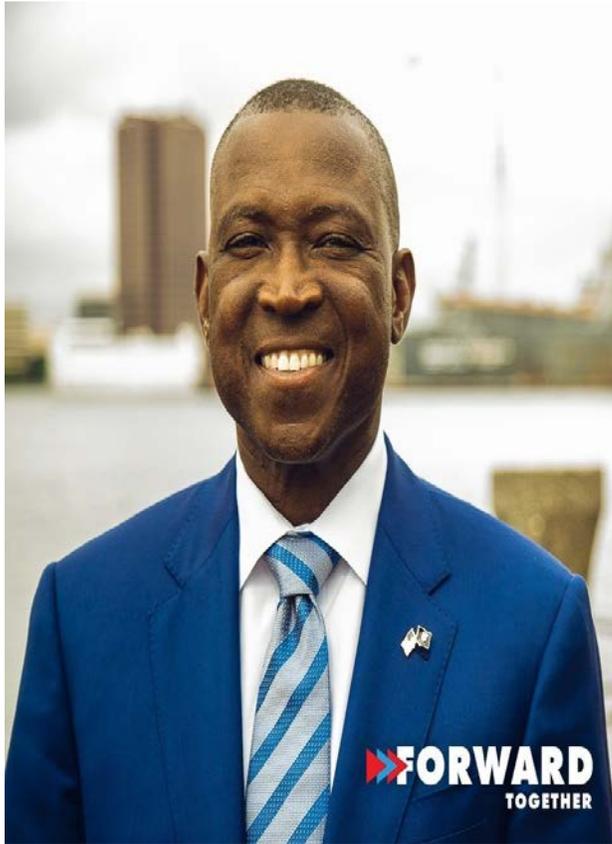
**Special Session**

# Coup d'Caucus

On April 27, the House Democratic Caucus removed former-Speaker Eileen Filler-Corn as the party's Minority Leader.

Del. Don Scott (D-Portsmouth) led the ouster, and on June 1, was himself elected as Minority Leader.





**House Minority Leader**  
Eilem D. Filseth  
(D-Pennsylvania)



**House Dem. Caucus Chair**  
Charniele Herring  
(D-Alexandria)



**Speaker of the House**  
Todd Gilbert  
(R-Shenandoah)



**House Majority Leader**  
Terry Kilgore  
(R-Scott)

# Changing House Leadership (again)

# Power in Portsmouth

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- Now two top leadership positions in the Democratic party are held by members from Portsmouth, pulling power away from Northern Virginia.
- Del. Don Scott and Sen. Louise Lucas are also some of Governor Youngkin's most vocal critics.



# Power in Portsmouth

The Cannabis Outlet opened its doors today in Norfolk and Portsmouth. Marijuana sales aren't legal yet in Virginia. The store is owned by [@SenLouiseLucas](#) and sells a variety of CBD products. [@WAVY\\_News](#)



4:18 PM · Jul 1, 2021 from Portsmouth, VA · Twitter for iPhone

Sen. Lucas has faced harsh critique for selling illegal cannabis products at her own store in Norfolk, including Delta-8 and other misleadingly labelled marijuana products.





**So what  
about  
Delta-8?**



- SB591 (Hanger) started off as a ban on edible marijuana products in the shape of humans, animals, vehicles, or fruit.
- After the General Assembly killed the 2022 Cannabis Control Act, legislators scrambled to regulate synthetic marijuana products, citing increased hospitalizations of children who ingested Delta-8 gummies.
- What began as a simple ban on certain shapes of edibles, became an attempt to ban all Delta-8.
- Gov. Youngkin added additional criminal penalties for possession that caused confusion for home cultivators and angered Democrats.
- Ultimately the bill failed, leaving Delta-8 unregulated.

# Budgeting for a Hail Mary

- As a last resort, conferees included a budget amendment to regulate marijuana products.
- However, the amendment does not explicitly ban Delta-8.
- The amendment requires products containing industrial hemp extract must have a label that states:
  - That the item contains THC and may not be sold to persons under 21 years of age;
  - All ingredients contained in item;
  - The serving size of the item; and
  - The total percentage and milligrams of THC included in the item and in each serving.
- Adds Class 3 Misdemeanor for possession between 4 and 16 ounces.



# Budgeting for a Hail Mary

- The amendment creates new prohibited practices for retailers under the VA Consumer Protection Act.
- Retailers are barred from selling industrial hemp products intended for human consumption\* that contain THC:
  - To anyone under 21.
  - Without the label mentioned previously.
  - Without childproof packaging.
  - Without a certificate from an accredited independent laboratory that verifies the THC concentration.
  - In the shape of a human, animal, vehicle, or fruit.
  - That fraudulently depict trademarks or logos of other products.



*\*smoked or ingested*

# Hemp Task Force



- The budget amendment also created a taskforce under the Secretary of Agriculture and Forestry to make recommendations for the manufacture and sale of industrial hemp extract and products containing THC intended for human consumption.
  - A report on their recommendations is due November 15, 2022.
  - The report from this task force will set the tone for all cannabis legislation in 2023.
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# Calling on Congress

On June 23, Attorney General Jason Miyares (R), joined 21 other attorneys general to send a letter to Congress urging them to take action on copycat THC products.



*"[THC-infused edibles'] deceiving appearance and packaging can confuse young children who come across them and has led to an increase in accidental consumption, putting their health at risk," said Attorney General Miyares.*

# VDACS Steps In

- In light of confusion around the budget amendment, VDACS announced that orally-consumed products that contain synthetic cannabinoids (Delta-8, Delta-10, etc.) are adulterated food products under the Food & Drink Law, and, therefore, may not be sold in Virginia.
- Retailers of orally-consumed industrial hemp extract or foods containing industrial hemp extract are now subject to regulations of VDACS.



# Problems Left to Tackle

- Testing and verification of industrial hemp products containing THC intended for human consumption, and testing labs in general.
- Out of state hemp and THC products.
- Underfunded and understaffed regulatory authority.
- Resentencing and expungement of criminal records.
- Social equity in future legislation.
- No legal avenue to purchase seeds for home cultivation.
- Law enforcement and retailer training.
- Product equivalencies.
- Applicants, employees, and employers.
- Transferring oversight of hemp and medical marijuana to VCCA.

