

**Nita Mensia-Joseph**  
**5107 Sunrise Court**  
**Suffolk, VA**  
**2-22-2022**

## **Request for Changes to SB391S3**

### ***Summary***

SB391S3 has several major flaws woven into the fabric of the legislation. The legislation is written in such a manner that it limits Virginians access to a once in a lifetime “captive market” opportunity. Existing pharmaceutical companies that have had a 10 year advantage in their own home states’ captive market now get to take advantage of Virginia's market before Virginians have the opportunity to do so.

Language also restricts competition by not allowing hemp growers licenses to grow hemp at 1% THC. More hemp can be grown outside at 1% THC at a lower cost than marijuana can be grown indoors with 17% - 24% THC. This would make hemp extraction very competitive. The language also prevents collaboration between smaller companies and restricts canopy size. Lower canopy square footage means lower profits and the inability to breakeven due to the heavy burden of start up costs. Outdoor cultivation is limited to the canopy restrictions as well, almost guaranteeing failure of small businesses.

Finally, the limits of marijuana for home growers or “casual” possession are at levels that basically legalize the illegal drug dealers and make regulation virtually impossible. There will be no way to differentiate between legal and illegal sales or adult sharing with remuneration.

Section A provides suggestions for a sustainable program that would allow every licensee a fair opportunity to capitalize on the once-in-a-lifetime captive market, mitigate the issues that will come when the marijuana is legalized nationally, and ensure that law enforcement can easily differentiate between legal and illegal sales. In addition, it describes an option that would allow the State to ramp up sales in a controlled manner without creating negative precedents

Section B lists all of the changes that shore up the long term exposures present in the current language.

### ***Table of contents***

#### **SECTION A**

Pages 2-4

**5 (five)** General / Programmatic Issues and Proposals for Mitigation

#### **SECTION B**

Pages 5 -9

Requested Changes to SB391S3

## SECTION A

### **5 (five) General / Programmatic Issues and Proposals for Mitigation:**

#### **1. How to launch quickly with the appropriate level of infrastructure AND with the capacity to monitor compliance and administer the laws.**

**Suggestion:** ABC has the existing policing infrastructure and retail stores. Minor store modifications would allow for quick ramp up of sales. For smokeable products the State already has a Tobacco Tax. Modification of those regulations could easily transfer to the cannabis industry. The Virginia Department of Agriculture currently monitors hemp and there are USDA regulations in place. Those can be modified and strengthened to include cannabis. The Board of Pharmacy already has regulations in place for extracted products; there is no need to reinvent that wheel with a separate Cannabis Control Authority. The State has everything it needs to launch. ABC just needs additional resources and support to coordinate with the other agencies. Using ABC reduces the State's operating costs and helps it receive cannabis Tax revenue earlier.

#### **2. How to effectively distinguish between legal and illegal sales**

**Suggestion:** When licensing small “mom and pop” dispensaries there is a very high potential to have what I call the “dual cash register” system - one for the state and the other “not for the state”. When all general public sales are from an ABC outlet, it is very clear who is legally selling hemp or cannabis and who is not. There is no way to totally eradicate the illegal market, but the State needs to be able to identify clearly what is and is not an illegal sale based on the location of the transaction. The model works reasonably well for ABC and hard liquor. *Consider this: If monitoring convenience stores for illegal sales of just beer to underaged citizens remains challenging, can you imagine trying to do that with cannabis? And the state already has a potential problem with controlling cannabis sales and bartering right now.*

#### **3. How to insure the health and safety of citizens from the hazards that can come from cannabis cultivation**

**Suggestion:** With products sold through ABC, the Agency can confirm all product testing through verifiable COA's (certificates of analysis). I would go as far to suggest that the State could enter the business of testing to ensure large corporate cannabis conglomerates do not buy up small testing facilities - as this would be a conflict of interest (and it is currently happening in the State). Cannabis COA's could be confirmed through random State sampling of product and testing in State labs. Cannabis should be tested for pesticides, herbicides, fungus, and bacteria - all of which are extremely detrimental to the health of consumers and occur during cultivation and processing. Cannabis should be traceable from seed to sale as

well and ABC- with the help of VDAC could certify the growers traceability and control processes as well. VDAC has that ability now with the GAP certification program. It would only need some minor modifications for cannabis.

4. **How to help Virginia owned businesses remain competitive: in order to compete with large conglomerates and / or when cannabis is legalized nationally and we begin to see cannabis imported from outside the state.**

**Suggestion:** As a hemp farmer who has been mentored by a couple of tobacco farmers west of I95, I have learned that small farmers / businesses can compete when they work together and share resources but they have to have a level **retail** playing field. But the State should not forget the tobacco and peanut farmer history.

As you may remember, the Federal Government deregulated tobacco (and peanuts) in 2004 eliminating production quotas and artificially high prices . The deregulation took out many small farmers but those working cooperatively became more competitive and were able to compete on a global scale. The **Tobacco Transition Payment Plan** was implemented to soften the blow to farmers and allow them the opportunity to either stay in the business and become more efficient or to retool and leave tobacco farming altogether. ***Deregulation helped acclimate farmers to international competition but the TTPP allowed that process to occur without harming farmers.***

***Why is this history lesson important?*** Think of ABC as the TTPP.

There are literally tons of cannabis inventory in California, Oregon, and Colorado - states that have a *10 year advantage over the Virginia market*. Cannabis is not insulated from the laws of supply and demand and will eventually become a commodity crop - hemp is well on its way.

However, as a transition to a more open market in the future - utilizing ABC right now has the ability to set sales pricing for its products that would allow in-state farmers and processors the transition time needed to tool up and compete with other states that have had cannabis legalized for years. If the federal government legalizes cannabis sooner rather than later, State coffers will benefit from large margins on imported low cost products shipped in from out of state.

This idea may seem counterintuitive and against all business principles, but ABC becomes the interim equalizer allowing the State regulatory agencies and businesses to build capacity. ***ABC softens entry, supports capacity building, allows Virginia residents to compete with west coast, canadian and pharmaceutical companies.***

Licensing limits could also expedite market equalization between Virginia growers, existing medical marijuana cultivators, and out of state business. By limiting the number of licenses - with provisions to allow licensees the ability to create cooperatives, the

industry can self regulate supply and potentially - over time - open up the retail market to entities other than ABC.

(The Virginia farmers were strong supporters of the Governor and this - I believe - would go a long way with them.)

**5. How do we not hurt the medical partners that have made an investment in the State market?**

**Suggestion:** Medical marijuana companies are interested in opening multiple sites now to recoup their original investment costs and obviously to make a profit. Out of fairness, *I believe that they should be able to open additional "medical sites"* but should sell to ABC for the general public. Lobbyists will push back on this. But if you allow unlimited general public sites from medical facilities, you have to do the same for everyone else. Not using ABC has a very high potential of opening up a new market fraught with long term risks and issues that are not in the best interests of Virginia citizens. Medical marijuana companies are thinking about today's profits.

## SECTION B

Line number(s)	Requested Change (s)	Issue and Justification
1364 - 1385	Add language for the Board to provide regulations and licensing for Industrial hemp growers to grow hemp with a 1.0% tetrahydrocannabinol concentration	<ol style="list-style-type: none"> <li>1. You can grow hemp at 1.0% THC outdoors cheaper than you can grow marijuana indoors. <b>The lack of 1.0%THC hemp limits competition for marijuana growers and keeps prices high. It unfairly restricts competition for extracted THC</b></li> </ol>
1970-1975 and 5210	<p>Copy the language in 3.0 line 1970-1975 in line 5210:</p> <p>"Maintain the reasonable separation of retailer interests from those of the <i>cultivators</i>, manufacturers, <del>bottlers</del>, <i>processors</i>, brokers, <del>importers</del>, and wholesalers in accordance with in consideration of the established trade customs, quantity and value of the articles or services involved; prevent undue competitive domination of any person by any other person engaged in the cultivation, manufacture, distribution and sale at retail or wholesale of <del>alcoholic beverages</del> <i>cannabis and cannabis products</i> in the Commonwealth, and promote reasonable accommodation of arm's length business transactions."</p>	<p>The ABC Board language:</p> <ol style="list-style-type: none"> <li>1. Provides fair and equitable marketplace</li> <li>2. Prevents domination (monopolies) by any one establishment, company, person or entity</li> <li>3. Allows for competition</li> <li>4. And separates the interests of all parts of the vertical chain</li> </ol>
5086	<p>3.0 Grant, suspend, and revoke licenses for the cultivation, manufacture, distribution, <del>sale</del>, and testing of marijuana, marijuana products, and regulated hemp products as provided by law. <i>And license ABC retail locations for the sale of marijuana products.</i></p>	<p>Retail sales of Marijuana to the general public through ABC stores</p> <ol style="list-style-type: none"> <li>1. Provides more opportunity for Virginia businesses to enter into the market</li> <li>2. Provides the State a greater guarantee of product control and receipt of tax revenue</li> <li>3. Effectively separates retailer interests from all other interests</li> <li>4. Clearly identifies legal and illegal sales</li> </ol>

5442	Establish criteria by which to evaluate new ABC licensees based on the density of retail marijuana stores in the community	Add “ABC” licensee as retailer
5294 - 5297	<del>shall limit such pharmaceutical processors to a total canopy of 150,000 square feet;</del> (ii) <del>shall limit such industrial hemp processors to a total canopy of 75,000 square feet,</del> <i>shall limit all processors to an indoor canopy of 150,000 square feet and an outdoor canopy of 300 acres for cannabis and 3000 acres for industrial hemp.</i>	<ol style="list-style-type: none"> <li>1. CBD is required for medical marijuana vapes. Hemp is grown outdoors with only 1 growing season unlike cannabis with about 4 indoor growing seasons a year and with smaller plants.</li> <li>2. Hemp at 1% will require a ratio of 1:20 cannabis plants for equal product extraction. All cannabis does NOT require an indoor grow for safe product</li> <li>3. The language keeps hemp from being competitive</li> </ol>
5319	REMOVE “retail marijuana store license”	All retail sales to the general public should be through ABC
5321-5322	<p>REMOVE “and limit such vertically integrated licensees to a total canopy of 8,000 square feet”</p> <p><b>NOTE:</b> <b><i>ONLY If limits are strongly desired then add:</i></b> <b>“And limit such vertically integrated licensees to a total indoor canopy of 25,000 square feet and an outdoor canopy of 300 acres.</b></p>	<p>This is restricting competition and is unfair and would not allow enough revenue for a small business to thrive when considering start up expenses</p> <p><b>To show how this is unfair, take for example, Pharmaceutical and Hemp processors with more than one license can have square footage of 150,000 and 75,00 square feet on line 5294 and 5295 but the Bill restricts the other competition to 8,000 square feet.</b></p>
5349-5382	<b>REMOVE IN ITS ENTIRETY</b>	This should be a state law and not model California. Restricting by County and Town is confusing and will support and promote the illegal market proposed with language in section 4.1-1101, line 6265 of this bill
5500	ADD: Marijuana cultivation facility <u>and/ or site</u> license	<p>Add “site” or better define “facility” when you speak of cultivation.</p> <p>Cultivation can occur on a farm and it can occur outdoors in a rural community.</p>

		Add a definition of cultivation facility to section 4.1-600 between "Edible marijuana" and "Hemp Product"
5575 - 5641	The Entire section should be re-written to focus on ABC retail store sales	All sales go through ABC to level the playing field
5657 and 5659	REMOVE retail marijuana store license	All sales go through ABC to level the playing field
5654 - 5655	REMOVE March 31, 2021 ADD December 31, 2021 REMOVE "and has processed no less than 40,000 pounds of hemp,"	The language is too narrow and for no specific reason. It begs the question "Why March 31?" and "Why 40,000 pounds?" Why not April first and 25,000 pounds. There is no legitimate basis for the criteria other than to restrict entrants
5661	ADD Any pharmaceutical processor may expand retail stores for prescription sales within their Health District. Both pharmaceutical processor or industrial hemp processor will sell through the ABC retail stores	This levels the retail field for all other cannabis companies and does not provide an unfair advantage in the market. The prescription market is a captive market and bears the exception.
5664	"Prior to January 1, 2024"  <b>REMOVE</b> this language if retail IS NOT under ABC  <b>RETAIN</b> this language ONLY IF Retail is under ABC	<b>1. Pharmaceutical companies get a head start over Virginians. These companies did not originate in VA. They enjoyed a closed market for their start up 10 years earlier in their home states. Virginians should have the same fair opportunity to enjoy the benefits of their closed market</b>
6256 - 6257	REMOVE: more than four ounces but not more than one pound or marijuana  ADD: more than 1 ounce	<b>There are 16 ounces in a pound. One (1) ounce of marijuana will yield: ~93 joints (cigarettes) ~56 blunts Do the math: 1 pound of marijuana will make 1,488 joints and 896 blunts Anyone with a pound of marijuana has far more marijuana than they can</b>

		smoke by themselves and are probably selling it on a small scale
6265	REMOVE “four pounds: REPLACE WITH “1/2 pound”	<p>It will take more than 4 plants to yield 1/2 pound of marijuana with a residential indoor grow room. Typical outdoor grow will yield about a pound per plant for VERY large plants. This language promotes indoor grow spaces for home cultivation as opposed to conspicuous outdoor grow.</p> <p>Four pounds of marijuana will produce a commercial level of joints and blunts. This level of cultivation will fuel the illegal market</p>
6325	ADD: Adult sharing with remuneration is considered retail sale of marijuana, and is illegal, and is a Class 2 misdemeanor	It is not clearly stated that this is illegal and this is currently a problem due to the vague language
6593	<p>REMOVE section 4.1-1203 Prohibiting transfer of retail marijuana or retail marijuana products by licensees</p> <p>OR</p> <p>Replace with: “Marijuana licensees shall transfer any retail marijuana or products from one licensed place of business to another licensed place of business provided all traceability and documentation follow the product and is auditable by the Board”</p>	This restricts collaboration between small businesses that may want to work together. It is a way to keep small companies from thriving if they have been given a slow retail market.(provided sales are not through ABC) This is not normal in any other business and should not be a restriction - provided all seed to sale traceability transfers with the product..
6605-6 626	REMOVE: section Solicitation by persons interested in manufacture, ect. of retail marijua or retail marijuana products	Licensees should be able to solicit each other for goods and services. This is a normal business practice and should not be limited by special permit and should be a privilege enjoyed with licensing. It represents unfair practices and prevents collaboration between small companies.
6830	<p>REMOVE 10%</p> <p>REPLACE WITH - 1%</p> <p>OR REPLACE WITH</p> <p>A bud from a bud site or cola taken as a sample from 10% of the cannabis plants harvested</p>	For outdoor hemp cultivation, crop size can range from 500 pounds up to 5000 pounds. 10% is a significant sample size



6841	<p>ADD: ..of allowable contamination for each contaminant, <i>“based on the end use of the product.”</i></p>	<p>Cannabis products may be smoked, ingested, extracted, used as topicals.</p> <p>Extraction will remove many contaminants. Products sent to extraction or used for topicals should have different standards from those smoked or eaten</p>
6842	<p>Mandatory testing; scope, recordkeeping...</p> <p>ADD: Resolution of testing discrepancy between retailer, processor, manufacturer and or cultivator</p>	<p>There is no language that supports vertical chain testing discrepancies when testing is performed and results returned are inconsistent. What product is destroyed; which test result is believed; if the issue is mold then how is the disagreement resolved? A retailer may store a product in a hot area causing moisture build up and subsequent mold. Who is to blame - cultivator, processor, or retailer? What product gets destroyed? Who arbitrates?</p>
6916	<p>ADD: Suggest that for all smokable product, the State requires a stamp - like tobacco - stamps that are prepaid</p> <p>You may consider this for edibles as well to help differentiate legal from illegal products and obtain the tax ahead of time.</p>	<p>This ensures the state gets its tax revenue up front.</p> <p>It also helps differentiate between legal and illegal smokeable product</p>