

## Department of Planning and Budget 2023 Fiscal Impact Statement

**1. Bill Number:** HB2294

**House of Origin**    ☐ Introduced    ☐ Substitute    ☐ Engrossed

**Second House**    ☐ In Committee    ☐ Substitute    ☒ Enrolled

**2. Patron:** Kilgore

**3. Committee:** Passed both Houses

**4. Title:** Industrial hemp; regulated hemp products, etc.

**5. Summary:** Establishes product packaging, labeling, and testing requirements for hemp products and creates a civil penalty of up to \$1,000 for certain violations relating to such products. The bill requires that laboratories that test hemp products that are consumed orally or by inhalation have a registration with the U.S. Drug Enforcement Administration. The bill requires any person who manufactures, sells, or offers for sale an industrial hemp extract, as defined in the bill, or food containing an industrial hemp extract to obtain a permit from the Commissioner of Agriculture and Consumer Services and creates a Class 1 misdemeanor penalty for certain violations and a civil penalty of up to \$10,000 for each day a violation occurs for certain violations. Additionally, the bill states that any person that intends to manufacture, store, sell, or offer for sale an industrial hemp extract for food containing an industrial hemp extract shall obtain a permit.

The bill caps the total tetrahydrocannabinol in an industrial hemp extract product when offered for retail sale at a total tetrahydrocannabinol (THC) concentration that is no more than 0.3 percent and no more than two milligrams of total THC per package. The bill also clarifies that the definition of marijuana does not include any substance containing THC that has been placed by the Board of Pharmacy into one of the schedules set forth in the Drug Control Act. The bill increases the civil penalty for certain actions relating to sales of cigarettes and hemp products from \$50 to \$500. The bill also removes THC from the Schedule I list of controlled substances and provides that any tetrahydrocannabinol isomer; ester; ether; salt, except delta-9-THC; or salts of such isomer, ester, or ether scheduled by the Board of Pharmacy in accordance with the bill shall not be included in the definition of marijuana.

Additionally, the bill establishes a \$5,000 civil penalty for willful and subsequent violations of certain fraudulent transactions and directs the deposit of the revenue to the Literary Fund. Lastly, the bill authorizes the Virginia Cannabis Control Authority (CCA), upon the referral or request of the Attorney General or the Virginia Department of Agriculture and Consumer Services (VDACS), to inquire into possible violations involving the sale of a substance intended for human consumption, orally or by inhalation, that contains a synthetic derivative of THC or THC. VDACS is required to collect and report to the Governor and General

Assembly by November 1, 2023, information regarding its enforcement of provisions regulating the sale and manufacture of industrial hemp. CCA is required, in consultation with VDACS, to conduct a study regarding edible hemp projects and hemp products intended for smoking and issue a report to the Governor and the General Assembly by November 1, 2023. Provisions currently in statute regarding the Board of Pharmacy's permitting of a pharmaceutical processor or a cannabis dispensing facility remain effective until January 1, 2024.

**6. Budget Amendment Necessary:** Yes. See Item 8.

**7. Fiscal Impact Estimates:** Final. See Item 8.

**8. Fiscal Implications:** This bill is anticipated to have a general fund expenditure impact on VDACS and the Office of the Attorney General (OAG). The bill requires that VDACS regulate the sale of a hemp product intended for smoking or an edible hemp product. It is anticipated that VDACS will require additional staff and general fund support to implement the provisions of this bill. The estimated cost to VDACS is \$2.2 million from the general fund and 15 full-time equivalent positions beginning in fiscal year 2024. The estimate of the need for the OAG is a total of five additional staff, three lawyers and two paralegals, to carry out the requirements of this bill for a total of \$632,443 from the general fund.

To implement and administer this program, it is anticipated that VDACS will need one program manager, one administrative support staff member, two registration analysts, three compliance officers, and eight inspectors, as well as funds for laboratory testing of regulated hemp products. VDACS is unable to determine how many entities sell regulated hemp products and will obtain a registration to continue to do so and does not expect to realize any revenue from the administration of the proposed registration program.

Additionally, this bill establishes a new \$10,000 civil penalty and a new \$5,000 civil penalty and raises to \$500 several local civil penalties. Revenue generated from the \$10,000 civil penalty is to be remitted to VDACS, and the \$5,000 civil penalty goes to the Literary Fund. Revenue generated from local civil penalties is to be deposited into the local treasury of the locality which instituted the action. Because the number of entities that will violate provisions of the act is unknown, the number and amount of civil penalties that may be issued are therefore unknown.

According to the Cannabis Control Authority (CCA), the bill would require the agency, upon referral by the OAG and VDACS, to inquire into 1) sales of products for human consumption containing a synthetic derivative of THC, 2) sales of products for human consumption, orally or by inhalation, that contain THC to persons under 21 years, 3) selling products intended for human consumption, orally or by inhalation, that contain THC without child resistant packaging or required labeling, 4) selling industrial hemp extract, food containing industrial hemp extract, or substance containing THC in the shape of a human, animal, vehicle, or fruit, 5) selling products intended for human consumption, orally or by inhalation, that contain THC that bear an unauthorized trademark or trade name, or 6) selling topical hemp products without a bittering agent. Because the required review is based on

referrals, it is not clear at this time as to number of occasions or the amount personnel the CCA would need to commence an investigation. However, the cost for each hemp inspector position is \$132,344 (includes salary, benefits and equipment). Any fiscal impacts on the CCA are expected to occur beginning in FY 2025.

The proposal excludes certain hemp products from the definition of marijuana and, as a result, may narrow the applicability of existing misdemeanor and felony offenses. The potential reduction in convictions for marijuana offenses cannot be estimated with existing data. Data are insufficient to estimate the additional number of Class 1 misdemeanor convictions that may result from enactment of the proposed regulatory requirements for hemp products. Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail and a fine of not more than \$2,500, either or both.

There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2022), the estimated total state support for local jails averaged \$40.39 per inmate, per day in FY 2021.

Pursuant to §30-19.1:4 of the Code of Virginia, the Virginia Criminal Sentencing Commission estimates a fiscal impact of \$0 for state adult correctional facilities. The projected potential increase in custody of the Department of Juvenile Justice cannot be determined.

The Virginia State Police, Department of Forensic Science, Department of Behavioral Health and Developmental Services, Department of Health, and Department of Health Professions do not anticipate any fiscal impact from the passage of this legislation.

- 9. Specific Agency or Political Subdivisions Affected:** Virginia Department of Agriculture and Consumer Services, Department of Health Professions, Cannabis Control Authority, Virginia State Police, Department of Behavioral Health and Developmental Services, Department of Forensic Science, Office of the Attorney General, courts, jails, localities, law enforcement agencies.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** This is similar to SB903.