

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: Finance and Appropriations

4. Title: Marijuana; modifies definition, tetrahydrocannabinol definition, civil penalty.

5. Summary: Establishes provisions for the registration of a retail facility for regulated hemp products, as defined in the bill, and establishes product packaging, labeling, and testing requirements for such products. The bill requires any person who manufactures 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. The bill creates a Class 1 misdemeanor and a civil penalty of up to \$10,000 for certain hemp-related violations and increases from \$50 to \$500 the civil penalty for certain actions relating to sales of cigarettes and hemp products. The bill requires topical hemp products, as defined in the bill, to include a bittering agent and imposes a \$500 penalty for violations of such requirement. The bill removes tetrahydrocannabinol from the Schedule I list of controlled substances and permits the Board of Pharmacy to schedule, deschedule, or reschedule a tetrahydrocannabinol isomer, except delta-9-tetrahydrocannabinol, or salts of such isomer in accordance with the provisions of the bill. The bill (i) provides that oversight of certain provisions of the bill, including provisions related to the registration requirement for retail facilities and packaging, labeling, and testing requirements, shall transfer from the Virginia Department of Agriculture and Consumer Services to the Virginia Cannabis Control Authority on July 1, 2024, and (ii) directs the Board of Directors of the Virginia Cannabis Control Authority to promulgate regulations regarding the maximum amount of tetrahydrocannabinol that may be contained in a regulated hemp product.

6. Budget Amendment Necessary: No. See Item 8.

7. Fiscal Impact Estimates: Preliminary. See Item 8.

8. Fiscal Implications: This bill is anticipated to have a general fund expenditure impact on the Virginia Department of Agriculture and Consumer Services (VDACS). 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. A budget amendment is not needed, as HB1400/SB800, as introduced, includes \$2.2 million from the general fund and 15 full-time

equivalent positions (FTEs) in fiscal year (FY) 2024 for VDACS for the establishment of the proposed regulated hemp product retail facility registration program.

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. The budget bill also includes 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 several new \$10,000 civil penalties and raises to \$500 several local civil penalties. It is unclear whether revenue generated from the new civil penalties is to be deposited to the general fund or to a nongeneral 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.

On July 1, 2024, when the powers and duties vested in VDACS under Article 4, Chapter 41.1, Title 3.2 of the Code of Virginia pertaining to regulated hemp products transfer to the Cannabis Control Authority (CCA), VDACS will no longer need the \$2.2 million and 15 FTEs to administer the proposed regulated hemp product program. CCA estimates the cost to meet the provisions of the bill to be \$1.9 million general fund in FY 2025 and beyond. It is anticipated that VDACS and CCA can work together to develop this regulatory program and provide for a seamless transfer of responsibility for the program, including staff, office space, furniture, and equipment, from VDACS to CCA beginning in FY 2025.

It is anticipated that this bill will have a fiscal impact on the Office of the Attorney General (OAG); however, a budget amendment is not needed, as the Introduced budget bill includes resources to support the provisions of this bill. The estimate of the need for the OAG is three additional staff, two lawyers and one paralegal, to carry out the requirements of this bill; \$371,000 from the general fund has been allocated in the introduced budget for this purpose.

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 Introduced budget bill includes \$50,000 in Item 404 T. 10. to support the impact of adjusting the definition of marijuana to include substances, including hemp products, that contain a certain amount of tetrahydrocannabinol.

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, Department of Corrections, Department of Juvenile Justice, localities, law enforcement agencies.

10. Technical Amendment Necessary: No.

11. Other Comments: This is similar to SB903.