

Department of Planning and Budget

2023 Fiscal Impact Statement

1. Bill Number: SB1233ER

House of Origin ☐ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☒ Enrolled

2. Patron: Obenshain

3. Committee: Passed Both Houses

4. Title: Marijuana advertising restrictions

5. Summary: The bill makes it a Class 1 misdemeanor to advertise in or send any advertising material into the Commonwealth regarding marijuana or marijuana products, or any substance containing a synthetic tetrahydrocannabinol or synthetic derivative of tetrahydrocannabinol other than those that may be legally sold in the Commonwealth under this subtitle or Article 4.2 (§ 54.1-3442.5 et seq.) of the Drug Control Act. Advertisements regarding marijuana, marijuana products, or any substance containing a synthetic tetrahydrocannabinol or synthetic derivative of tetrahydrocannabinol must comply with the provisions of this legislation and Board regulations. The bill provides that for violations of certain distance and zoning restrictions on outdoor advertising, the Board must give the advertiser written notice to take corrective action and that, if such corrective action is not taken within 30 days, the advertiser is guilty of a Class 4 misdemeanor. Advertising conducted by pharmaceutical processors or cannabis dispensing facilities are exempt from these restrictions.

The bill establishes numerous restrictions on marijuana advertisements, including provisions that prohibit advertisements from (i) targeting minors; (ii) being placed near schools, playgrounds, and certain other places; (iii) being displayed at a sporting event or on a billboard; (iv) being misleading, deceptive, or false; (v) referencing the intoxicating effects of marijuana or any substance containing a synthetic tetrahydrocannabinol or synthetic derivative of tetrahydrocannabinol; or (vi) promoting overconsumption or consumption by minors.

6. Budget Amendment Necessary: See Item 8.

7. Fiscal Impact Estimates: Final (See Item 8 below)

8. Fiscal Implications: According to the Cannabis Control Authority (“CCA”), the bill requires the CCA to (1) draft regulations restricting advertising of marijuana and hemp-derived products; (2) provide written notice of corrective action to offenders of the regulations (§ 4.1-1116); (3) determine if there are applicable exceptions (§ 4.1-1402(C)); and (4) grant permits for variances (§ 4.1-1402(D)).

Because regulated advertising can be in physical or digital format, the CCA reports the agency will likely assign two enforcement specialists to each of the 5 Health Service Areas (HSA) in the Commonwealth. The cost for each enforcement position is \$167,095 (salary, benefits and equipment). CCA enforcement officers will be responsible for investigating complaints/tips of inappropriate advertising, verifying/observing the infraction, identifying the violator, creating a dialogue to determine if exceptions are warranted, and assessing whether variance requirements are met.

Additionally, the CCA reports the agency may need a program analyst and 2 program assistants. The two program assistants will be responsible for monitoring and reporting online advertising concerns, identifying and tracking point of sale locations throughout the Commonwealth, and assisting with scheduling and dispatching enforcement officers to physical locations. In addition, they will be responsible for preparing written notices to violators, ensuring receipt of the notice, keeping official program records (including but not limited to variance and exception records) and correspondence. The program analyst will assist with the development of proposed Board regulations and policies, processing requests for variances, and presenting matters to the Board for action. The cost for each program assistant is \$117,120 (salary, benefits, equipment) and the cost for a program analyst is \$129,638. In Chapter 2, 2022 Virginia Acts of Assembly Special Session I, the CCA has a base general fund appropriation of \$8.2 million in FY 2023 and \$11.2 million in FY 2024. Assuming base appropriations remain at Chapter 2 levels, the agency should have sufficient appropriation to cover the anticipated costs of the amended legislation.

The bill amends § 4.1-1116 (Illegal advertising; penalties; exception) making it a Class 1 misdemeanor to advertise in or send any advertising material into the Commonwealth regarding marijuana, marijuana products, or any substance containing a synthetic tetrahydrocannabinol or synthetic derivative of tetrahydrocannabinol other than those that may be legally sold.

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.

The bill makes it a Class 4 misdemeanor to violate certain distance and zoning restrictions on outdoor advertising. A Class 4 misdemeanor is punishable by a fine of up to \$250. All revenue collected from such fines is deposited into the Literary Fund. However, it is not possible to estimate either the number of convictions that may result or the amount of each

fine that may be assessed under this legislation. Therefore, the impact of this bill cannot be determined.

According to the Office of the Executive Secretary of the Supreme Court (“OES”), the bill is not expected to have a material fiscal impact on agency resources.

9. Specific Agency or Political Subdivisions Affected: Virginia Cannabis Control Authority, Department of Corrections, Literary Fund, local and regional jails

10. Technical Amendment Necessary: No

11. Other Comments: None