

## Department of Planning and Budget 2021 Special Session I Fiscal Impact Statement

**1. Bill Number:** SB1406ER

**House of Origin**     Introduced         Substitute         Engrossed  
**Second House**     In Committee     Substitute         Enrolled

**2. Patron:**        Ebbin

**3. Committee:** Passed Both Houses

**4. Title:**         Legalization of simple possession of marijuana

**5. Summary:** The bill provides the following:

It repeals the following sections of the Code of Virginia:

- § 18.2-248.1, which establishes penalties for sale, gift, distribution, or possession with intent to sell, give, or distribute marijuana;
- § 18.2-250.1, which establishes that the possession of marijuana is unlawful and assesses a \$25 civil penalty for violations; and
- § 18.2-251.1, which permits possession or distribution of marijuana for medical purposes.

It establishes a 20-member Cannabis Equity Reinvestment Board in the executive branch of state government, to be chaired by the Director of Diversity, Equity, and Inclusion or his/her designee. The Board must be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties. This provision becomes effective on July 1, 2021 (Enactment #7).

The bill (§2.2-2499.4) establishes a Cannabis Equity Reinvestment Fund (Fund). Moneys in the Fund must be used solely for the purposes of:

- Supporting persons, families, and communities historically and disproportionately targeted and affected by drug enforcement;
- Providing scholarship opportunities and educational and vocational resources for historically marginalized persons, including persons in foster care, who have been adversely impacted by substance use individually, in their families, or in their communities;
- Awarding grants to support workforce development, mentoring programs, job training and placement services, apprenticeships, and reentry services that serve persons and communities historically and disproportionately targeted by drug enforcement;
- Contributing to the Virginia Indigent Defense Commission established pursuant to § 19.2-163.01; and
- Contributing to the Virginia Cannabis Equity Business Loan Fund established pursuant to §4.1-1501.

The bill amends § 2.2-2818 related to health and related insurance for state employees and adds employees of the Virginia Cannabis Control Authority to the provisions. It provides that the Office of the Attorney General may provide legal service in civil matters for members, agents or employees of the Virginia Cannabis Control Authority (§2.2-507)

The bill allows the Virginia Board of Agriculture and Consumer Services (VDACS) to establish a criteria for or a list of pesticides that may be used on cannabis cultivated, and amends the definitions of certain hemp-related terms (§3.2-4112). It requires the Board of Agriculture and Consumer Services to promulgate regulations to implement the provisions of this act by July 1, 2023 (Enactment #15)

The bill also allows the Commissioner of VDACS to charge a nonrefundable fee not to exceed \$50 for any license, and requires the Commissioner to notify the Superintendent of State Police of the locations of all hemp testing laboratories, and provide a copy of the license issued to the chief law-enforcement officer of the county or city where a hemp testing laboratory will be located (§3.2-4114.2). It requires the Commissioner to establish a licensure program to allow a laboratory to test industrial hemp or hemp products and to inspect each location at which the laboratory tests hemp. The bill requires that if the results of a test indicate that the tested hemp product exceeds the maximum level of allowable tetrahydrocannabinol (THC) or contamination for any contaminant for which testing is required, a hemp testing laboratory must, within seven days of completing the test, notify the Commissioner of the test results. For each day any violation of this section occurs, the Commissioner may assess a penalty not to exceed: (i) \$1,000 for a first violation, (ii) \$5,000 for a second violation, and (iii) a six-month license suspension for a third or subsequent violation within a five-year period. All penalties collected by the Commissioner pursuant to this subsection shall be deposited in the state treasury (§3.2-4117.1 and § 3.2-4117.2).

The bill establishes requirements for testing, packaging, labeling, and advertising of hemp products: (i) intended for smoking or (ii) that is or includes an industrial hemp extract intended for human consumption distributed, offered for sale, or sold in the Commonwealth. For any violation of these requirements by a processor or by a retail establishment, the Commissioner may assess a penalty not to exceed: (i) \$100 for a first violation, (ii) \$200 for a second violation, and (iii) \$500 for a third or subsequent violation (§3.2-4122).

The legislation requires a processor to destroy the batch of hemp product intended for smoking or consumption whose testing sample exceeds the maximum level of allowable contamination for each contaminant established unless remedial measures can bring the hemp product into compliance with such regulation. Penalties for violating this subsection by a processor, is a fine not to exceed: (a) \$100 for a first violation, (b) \$200 for a second violation, and (c) \$500 for a third or subsequent violation. All penalties collected by the Commissioner pursuant to this subsection must be deposited in the state treasury.

The bill defines “Edible Marijuana Products” and requires the adoption of regulation by VDACS, and amends Title 4.1 to Alcoholic Beverage and Cannabis Control and adds Subtitle I, Alcoholic Beverage Control Act expanding the definitions under the Act. It creates Chapter 6 (Subtitle II) and defines marijuana to mean any part of a plant of the genus *Cannabis*, whether growing or not, its seeds or resin; and every compound, manufacture, salt, derivative, mixture, or

preparation of such plant, its seeds, its resin, or any extract containing one or more cannabinoids. It also defines "Special agent" to mean an employee of the Virginia Cannabis Control Authority whom the Board has designated as a law-enforcement officer.

The bill (§4.1-601) creates the Virginia Cannabis Control Authority as an independent political subdivision of the Commonwealth, exclusive of the legislative, executive, or judicial branches of state government. The bill outlines the responsibilities of the Board of Directors of the Authority. The Virginia Cannabis Control Authority consists of the Virginia Cannabis Board of Directors, Cannabis Public Health Advisory Council, the Chief Executive Officer, and the agents and employees of the Authority (§4.1-602). This provision is effective on July 1, 2021 (Enactment #7).

The bill also establishes a 21-member Cannabis Public Health Advisory Council (Advisory Council) as an advisory council to the Cannabis Control Authority Board of Directors for the purpose of assessing and monitoring public health issues, and trends, related to marijuana and marijuana legalization, and making recommendations regarding health warnings, retail marijuana, and retail marijuana products safety and product composition, and public health awareness, programming, and related resource needs (§4.1-603). This provision is effective on July 1, 2021 (Enactment #7).

The bill establishes powers and duties of the Cannabis Control Authority Board of Directors, which include, among other items, it provides that the Board of Directors will have the power, among other things, to fix, alter, charge, and collect rates, rentals, fees, and other charges for the use of property of, the sale of products of, or services rendered by the Authority at rates to be determined by the Authority for the purpose of providing for the payment of the expenses of the Authority. The Board of Directors also has the power to establish a position for a Cannabis Social Equity Liaison to lead the Cannabis Business Equity and Diversity Support Team and liaise with the Director of Diversity, Equity, and Inclusion on matters related to diversity, equity, and inclusion standards in the marijuana industry (§4.1-604).

The Authority has power to, at its discretion, consultants, researchers, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and other employees and special agents and fix their compensation to be payable from funds made available to the Authority. The Board is also authorized to assess and collect civil penalties and civil charges for violations of this subtitle and Board regulations and establish and collect fees for all permits. The bill requires the Attorney General to provide legal services for the Authority. This provision is effective on July 1, 2021 (Enactment #7).

The bill also creates § 4.1-606, concerning regulations of the Board, and the types of regulations it may promulgate, including the establishment of criteria by which to evaluate social equity license applicants. It also limits the number of licenses issued by type or class to operate a marijuana establishment. It provides that the Authority be governed by Board of Directors who shall receive annual salary, compensation, and reimbursement of expenses (§ 4.1-607), and for the appointment, salary, and powers of the Board's Chief Executive Officer, who must be appointed by the Governor and confirmed by the General Assembly (§ 4.1-608).

The bill provides (§ 4.1-613) a process by which the Board must handle any money collected; and provides under (§ 4.1-614) what constitutes an Enterprise Fund for the payment of the salaries and remuneration of the members, agents, and employees of the Board and all costs and expenses incurred by the administration of the Board.

All moneys collected by the Board must be paid directly and promptly into the state treasury, or be deposited to the credit of the State Treasurer in a state depository, without any deductions on account of salaries, fees, costs, charges, expenses, refunds or claims of any description. All moneys so paid into the state treasury, less the net profits determined, must be set aside as and constitute an Enterprise Fund, subject to appropriation, for the payment of: (i) the salaries and remuneration of the members, agents, and employees of the Board and (ii) all costs and expenses incurred in the administration. The net profits shall be transferred by the Comptroller to the general fund of the state treasury quarterly, within 50 days after the close of each quarter or as otherwise provided in the appropriation act.

As allowed by the Governor, the Board may deduct from the net profits quarterly a sum for the creation of a reserve fund not exceeding the sum of \$2.5 million in connection with the administration of this subtitle and to provide for the depreciation on the buildings, plants, and equipment owned, held, or operated by the Board. After accounting for the Authority's expenses net profits shall be appropriated in the general appropriation act as follows:

- Forty percent to pre-kindergarten programs for at-risk three-year-olds and four-year-olds;
- Thirty percent to the Cannabis Equity Reinvestment Fund established pursuant to § 2.2-2499.4;
- Twenty-five percent to substance use disorder prevention and treatment programs; and
- Five percent to public health programs.

"Net profits" means the total of all moneys collected by the Board, less local marijuana tax revenues collected under § 4.1-1004 and distributed pursuant to § 4.1-614 and all costs, expenses, and charges authorized by this section.

All local tax revenues collected must be paid into the state treasury and credited to a special fund, titled "Collections of Local Marijuana Taxes." The revenues must be credited to the account of the locality in which they were collected. If revenues were collected from a marijuana establishment located in more than one locality by reason of the boundary line or lines passing through the marijuana establishment, tax revenues shall be distributed pro rata among the localities.

The Authority is required to provide to the Comptroller any records and assistance necessary for the Comptroller to determine the locality to which tax revenues are attributable. On a quarterly basis, the Comptroller shall draw his warrant on the Treasurer of Virginia in the proper amount in favor of each locality entitled to the return of its tax revenues, and such payments shall be charged to the account of each such locality under the special fund created for this purpose. If errors are made in any such payment, or adjustments are otherwise necessary, whether

attributable to refunds to taxpayers, or to some other fact, the errors shall be corrected and adjustments made in the payments for the next quarter.

The Authority is exempted from personnel and procurement procedures, information systems (§ 4.1-617); employees of the Authority are to be considered employees of the Commonwealth. Employees are eligible for membership in the Virginia Retirement System or other retirement plan as authorized by law, and participation in all health and related insurance and other benefits, including premium conversion and flexible benefits, available to state employees as provided by law (§ 4.1-623). It provides for police power of members, agents, and employees of the Board (§ 4.1-624). It provides for local referendum to prevent establishment of retail marijuana stores. (§ 4.1-629 through § 4.1-631).

To ensure that no retail marijuana or retail marijuana products grown or processed by a marijuana establishment are sold or otherwise transferred except as authorized by law, the Board must develop and maintain a seed-to-sale tracking system that tracks retail marijuana from either the seed or immature plant stage until the retail marijuana or retail marijuana product is sold to a customer at a retail marijuana store (§ 4.1-611). This provision is effective on July 1, 2021 (Enactment #7).

The Board may issue, including marijuana cultivation facility licenses (§ 4.1-800), marijuana manufacturing facility licenses (§ 4.1-801), marijuana testing facility licenses (§ 4.1-802), marijuana wholesaler licenses (§ 4.1-803), and retail marijuana store licenses (§ 4.1-804). It provides a process for multiple licenses and any person who wishes to possess a license in more than one license category must pay a \$1 million fee to the Board. The Board must allocate such fees to the following: (i) the Virginia Cannabis Equity Loan Fund, (ii) the Virginia Cannabis Equity Reinvestment Fund, or (iii) a program, as determined by the Board, which provides job training services to persons recently incarcerated (§ 4.1-805).

The remainder of the section concerns the provision of such licenses, including instances in which the Board may refuse such licenses (§ 4.1-809 and § 4.1-810). Section 4.1-900 provides grounds for which the Board may suspend or revoke licenses, summary suspension in emergency circumstances, including duties to provide notice and to hold a hearing (§ 4.1-901), and to impose civil penalties (§ 4.1-903). In suspending any license, the Board may impose and collect such civil penalties as it deems appropriate.

The civil penalties cannot exceed \$2,000 for the first violation occurring within five years immediately preceding the date of the violation or \$5,000 for the second or subsequent violation occurring within five years immediately preceding the date of the second or subsequent violation. However, if the violation involved selling retail marijuana or retail marijuana products to a person prohibited from purchasing retail marijuana or retail marijuana products the Board may impose a civil penalty not to exceed \$3,000 for the first violation occurring within five years immediately preceding the date of the violation and \$6,000 for a second or subsequent violation occurring within five years immediately preceding the date of the second or subsequent violation in lieu of such suspension or any portion thereof, or both.

The Board may also impose a requirement that the licensee pay for the cost incurred by the Board not exceeding \$25,000 in investigating the licensee and in holding the proceeding resulting in the violation in addition to any suspension or civil penalty incurred. It also establishes civil penalties (§4.1-702) for licensees who fail to pay the required license fee in a timely manner and the moneys are to be deposited into the state treasury.

Section 4.1-1003 establishes the marijuana tax, which would be levied on the sale of any retail marijuana, retail marijuana products, paraphernalia, non-retail marijuana, and non-retail marijuana products at the rate of 21 percent, and provides for exceptions to this tax. The tax shall be in addition to any tax imposed under Chapter 6 (§ 58.1-600 et seq.) or any other provision of federal, state, or local law. The tax shall not apply to any sale:

- From a marijuana establishment to another marijuana establishment.
- Of cannabis oil for treatment under the provisions of § 54.1-3408.3.
- Of industrial hemp by a grower, processor, or dealer.
- Of industrial hemp extract or food containing an industrial hemp extract.

Revenues remitted to the Authority must be disposed of as provided in § 4.1-614. The bill also provides for an optional local marijuana tax (§ 4.1-1004). Specifically, it provides that any locality may by ordinance levy a three percent tax on any sale taxable under § 4.1-1003. The tax is in addition to any local sales tax imposed under Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, any food and beverage tax imposed under Article 7.1 (§ 58.1-3833 et seq.) of Chapter 38 of Title 58.1, and any excise tax imposed on meals under § 58.1-3840. Other than the taxes authorized and identified in this subsection, a locality cannot impose any other tax on a sale taxable under § 4.1-1003.

If a town imposes a tax under this section, any tax imposed by its surrounding county under this section does not apply within the limits of the town. Additionally, localities are not prohibited from imposing any tax authorized by law on a person or property regulated under this subtitle. However, localities can impose a license or privilege tax or fee on a business engaged in whole or in part in sales taxable under § 4.1-1003 if such tax or fee is (i) based on an annual or per-event flat fee authorized by law or (ii) is an annual license or privilege tax authorized by law, and such tax includes sales or receipts taxable under § 4.1-1003 in its taxable measure.

Any locality that enacts an ordinance pursuant to this section, has to, within 30 days, notify the Authority and any retail marijuana store in such locality of the ordinance's enactment. The ordinance must take effect on the first day of the second month following its enactment.

Tax levied under this section must be administered and collected by the Authority in the same manner as provided for the tax imposed under § 4.1-1003. Revenues remitted to the Authority under this section shall be disposed of as provided in § 4.1-614.

It further establishes the Virginia Cannabis Equity Business Loan Program and Fund. The Program must provide low interest and zero-interest loans to qualified social equity qualified cannabis in order to foster business ownership and economic growth within communities that have been the most disproportionately impacted by the former prohibition of cannabis. (§4.1-

1501). The Authority must select and work in collaboration with a community development financial institution (CDFI) to assist in administering the Program.

The bill establishes a legal age of 21 for individuals to lawfully possess not more than one ounce of marijuana or an equivalent amount of marijuana product (§ 4.1-1100). Possessing marijuana or marijuana products in excess of one ounce is punishable by a civil penalty of no more than \$25, which must be deposited into the Drug Offender Assessment and Treatment Fund. Persons who possess more than one pound of marijuana or an equivalent amount of marijuana product, with the exception of licensees performing their duties, law enforcement officers, jail officers, or correctional officers who are certified drug detection dog handlers, are guilty of a felony punishable by a term of imprisonment of between one and ten years, and a fine of not more than \$250,000, or both.

The bill provides that persons who are 21 years of age or older may cultivate up to four marijuana plants for personal use at their place of residence (§ 4.1-1101). It also creates Class 6 felony for any person who cultivates or manufactures marijuana or marijuana products in the Commonwealth without being licensed to cultivate or manufacture such marijuana or marijuana products and for persons who conspire together to violate this section (§4.1-1102). If any person who is not licensed sells, gives, or distributes any marijuana or marijuana products he is guilty of a Class 2 misdemeanor. A second or subsequent conviction under this section is a Class 1 misdemeanor (§ 4.1-1103); there are penalties for selling marijuana or marijuana products to any person under the age of 21 and provides a criminal penalty (§4.1-1104). It creates § 4.1-1105, concerning instances in which the purchase of marijuana or marijuana products is considered unlawful and provides for a civil penalty of \$25 for the consumption, purchase, possession, or attempt to do so of marijuana by persons under 18 years of age.

Section 4.1-1106 sets forth penalties, forfeitures for purchasing retail marijuana or retail marijuana products for one to whom they should not be sold to, and § 4.1-1107 provides penalty for using or consuming marijuana or marijuana products while in a motor vehicle being driven upon a public highway. Additionally, §4.1-1108 through §4.1-1120 provides for criminal and civil penalties for various violations of Chapter 11 (Possession of Retail Marijuana and Retail Marijuana products).

Additionally, as a term or condition a court must require the person to undergo a substance abuse assessment and enter a treatment or an education program provided by a program licensed by the Department of Behavioral Health and Developmental Services, or a similar program that is made available through the Department of Corrections; a local community-based probation services agency established pursuant to § 9.1-174; or an alcohol safety action program (ASAP) certified by the Commission on the Virginia Alcohol Safety Action Program (VASAP). Chapter 12 outlines the penalties for prohibited practices by licensees, including illegal cultivation of marijuana or marijuana products by licensees (§4.1-1105).

It amends 16.1-69.48:1. (Fixed fee for misdemeanors, traffic infractions and other violations in district court; additional fees to be added) and adds the newly created §4.1-1120.

Additionally, any person who has been sentenced to jail or to the Department of Corrections for a marijuana offense, with some exceptions, may, at any time before the sentence has been

completely served, file a motion with the court that heard the case for a resentencing hearing. If it appears compatible with the public interest and there are circumstances in mitigation of the offense, including the legalization of marijuana, such court may reduce, suspend or otherwise modify such person's sentence at any time before such person's sentence has been completely served. The petitioner is entitled to counsel if he claims to be indigent.

Additionally, the proposed legislation provides that it is unlawful under § 46.2-341.20:7 for any person to knowingly or intentionally possess marijuana or marijuana oil in a commercial motor vehicle, unless it was obtained directly from or pursuant to a valid prescription or order of a practitioner, or as otherwise authorized in the Federal Drug Control Act. Violations are punishable by a civil penalty of no more than \$25.

The bill provides the following enactments:

- Enactment clause #3 provides that, except as provided in the fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, and twenty-first, twenty-second, twenty-third, twenty-fourth and twenty fifth enactments of this act, the provisions of this act shall become effective on January 1, 2024.
- Enactment clause #4 provides that the provisions of §4.1-629 of the Code of Virginia, as created by this act, shall become effective on July 1, 2022.
- Enactment clause #5 provides that, subject to the provisions of the tenth and twelfth enactments, the provisions of (i) §§ 4.1-630 and 4.1-631 of the Code of Virginia, as created by this act, and (ii) Chapter 7 (§ 4.1-700 et seq.), except clause (iv) of § 4.1-700, Chapter 8 (§ 4.1-800 et seq.), Chapter 9 (§ 4.1-900 et seq.), Chapter 10 (§ 4.1-1000 et seq.), Chapter 12 (§ 4.1-1200 et seq.), and Chapter 14 (§ 4.1-1400 et seq.) of Title 4.1 of the Code of Virginia, as created by this act, shall become effective on July 1, 2023.
- Enactment clause #6 provides that the provisions of Article 29 (§ 2.2-2499.1 et seq.) of Chapter 24 of Title 2.2, §§ 4.1-600 through 4.1-628, 4.1-1100, 4.1-1105.1, 4.1-1121 of the Code of Virginia, as created by this act; Chapter 15 (§ 4.1-1500 et seq.) of Title 4.1 of the Code of Virginia, as created by this act; §19.2-389.3 of the Code of Virginia, as amended by this act, and (ii) the repeal §18.2-250.1 of the Code of Virginia, the provisions of the first, second, third, fourth, fifth, and tenth enactments of this act shall not become effective unless reenacted by the 2022 Session of the General Assembly. The provisions of §4.1-1105.1 of the Code of Virginia, as created by this act, shall not become effective if the provisions of the first, second, and third enactments of this act are reenacted by the 2022 Session of the General Assembly.
- Enactment clause #7 provides that the provisions of Article 29 (§ 2.2-2499.1 et seq.) of Chapter 24 of Title 2.2 of the Code of Virginia, as created by this act, §§ 4.1-600 through 4.1-628 of the Code of Virginia, as created by this act, and Chapter 15 (§ 4.1-1500 et seq.) of Title 4.1 of the Code of Virginia, as created by this act, shall become effective on July 2, 2021.
- Enactment clause #8 provides that the provisions of §19.2-389.3 of the Code of Virginia, as amended by this act, shall become effective on July 1, 2025.
- Enactment clause #9 provides that the Board of Directors of the Virginia Cannabis Control Authority must promulgate regulations to implement the provisions of this act



by July 1, 2023; however, the Board shall not adopt such regulations prior to July 1, 2022, and shall present such regulations to the Cannabis Oversight Commission for review prior to adoption. With the exception of § 2.2-4031 of the Code of Virginia, neither the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) nor public participation guidelines adopted pursuant thereto shall 12906 apply to the initial adoption of any regulations pursuant to this act. Prior to adopting any regulations pursuant to this act, the Board shall publish a notice of opportunity to comment in the Virginia Register of Regulations and post the action on the Virginia Regulatory Town Hall. Such notice of opportunity to comment shall contain (i) a summary of the proposed regulations; (ii) the text of the proposed regulations; and (iii) the name, address, and telephone number of the agency contact person responsible for receiving public comments. Such notice shall be made at least 60 days in advance of the last date prescribed in such notice for submittals of public comment. The legislative review provisions of subsections A and B of § 2.2-4014 of the Code of Virginia shall apply to the promulgation or final adoption process for regulations pursuant to this act. The Board shall consider and keep on file all public comments received for any regulations adopted pursuant to this act. The provisions of this enactment shall become effective in due course.

- Enactment clause #10 provides that the Virginia Cannabis Control Authority (the Authority) may start accepting applications for licenses pursuant to the provision of § 4.1-1000 of the Code of Virginia, as created by this act, on July 1, 2023, and shall, from July 1, 2023, until January 1, 2024, give preference to qualified social equity applicants, as determined by regulations promulgated by the Board of Directors of the Authority in accordance with this act. The Authority may issue any license authorized by this act to any applicant that meets the requirements for licensure established by this act. Notwithstanding the third enactment of this act, any applicant issued a license by the Authority may operate in accordance with the provisions of this act prior to January 1, 2024; however, (i) no retail marijuana store licensee may sell retail marijuana, retail marijuana products, immature marijuana plants, or marijuana seeds, and (ii) no marijuana cultivation facility licensee may sell immature marijuana plants, or marijuana seeds to a consumer prior to January 1, 2024. Notwithstanding any other provision of law, on or after July 1, 2023, and prior to January 1, 2024, no marijuana cultivation facility licensee, marijuana manufacturing facility licensee, marijuana wholesaler licensee, retail marijuana store licensee, or marijuana testing facility licensee or agent or employee thereof shall be subject to arrest or prosecution for a violation of §§ 18.2-248, 18.2-248.01, 18.2-255, 18.2-255.1, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-265.3, or 18.2-308.4 of the Code of Virginia, as amended by this act, or §§ 18.2-248.1 or 18.2-250.1 of the Code of Virginia, as repealed by this act, involving marijuana if such violation is related to acts committed within the scope of the licensure or employment and in accordance with the provisions of Subtitle II (§ 4.1-600 et seq.) of Title 4.1 of the Code of Virginia, as created by this act. From July 1, 2023, to July 1, 2028, the Authority shall (a) reserve a license slot for a qualified social equity applicant for every license that was initially granted to a social equity applicant and was subsequently surrendered and (b) reserve license slots for all pharmaceutical processors that have been issued a permit by the Board of Pharmacy pursuant to Article 4.2 (§ 54.1-3442.5 et seq. of the Code of Virginia) of the Drug Control Act and issue a cultivation, manufacturing, wholesale, and

retail license to any such pharmaceutical processor that meets the applicable licensing requirements. The Authority shall ensure that geographic dispersion is achieved regarding the issuance of retail marijuana store licenses and shall reassess the issuance of retail marijuana store licenses at the following intervals to ensure that geographic dispersion is maintained: after issuance of 100 licenses, 200 licenses, and 300 licenses. The provisions of this enactment shall become effective July 1, 2022.

- Enactment clause #11 provides that the Virginia Cannabis Control Authority (the Authority) shall develop and implement its diversity, equity, and inclusion plan pursuant to § 4.1-604 of the Code of Virginia, as created by this act, and publish resources to assist social equity applicants by January 1, 2023. The Authority shall, in consultation with the Secretaries of Public Safety and Homeland Security, Transportation, and Health and Human Resources, develop and implement a health, safety, and safe driving campaign by January 1, 2023. The provisions of this enactment shall become effective in due course.
- Enactment clause #12 provides that the sale of retail marijuana, retail marijuana products, immature marijuana plants, and marijuana seeds by retail marijuana store licensees and the sale of immature marijuana plants and marijuana seeds by marijuana cultivation facility licensees shall be permitted on and after January 1, 2024. The provisions of this enactment shall become effective in due course.
- Enactment clause #13 provides that the initial terms of office of those persons appointed to serve as non-legislative citizen members on the Cannabis Equity Reinvestment Board pursuant to § 2.2-2499.1 of the Code of Virginia, as created by this act, shall be staggered as follows: five persons shall be appointed for a term to expire June 30, 2025; four persons shall be appointed for a term to expire June 30, 2026; and four persons shall be appointed for a term to expire June 30, 2027. Thereafter, non-legislative citizen members of the Cannabis Equity Reinvestment Board shall serve for terms of four years. The provisions of this enactment shall become effective in due course.
- Enactment clause #14 provides that the initial terms of office of those persons appointed to serve as non-legislative citizen members on the Cannabis Public Health Advisory Council pursuant to § 4.1-603 of the Code of Virginia, as created by this act, shall be staggered as follows: five persons shall be appointed for a term to expire June 30, 2025; five persons shall be appointed for a term to expire June 30, 2026; and four persons shall be appointed for a term to expire June 30, 2027. Thereafter, non-legislative citizen members of the Cannabis Public Health Advisory Council shall serve for terms of four years. The provisions of this enactment shall become effective in due course.
- Enactment clause #15 provides that the Board of Agriculture and Consumer Services shall promulgate regulations required by subsections C and D of § 3.2-4114 of the Code of Virginia, as amended by this act, to become effective by July 1, 2023. The provisions of this enactment shall become effective in due course.
- Enactment clause #16 provides that the Secretaries of Agriculture and Forestry, Health and Human Resources, and Public Safety and Homeland Security shall convene a work group with all appropriate state agencies and authorities to develop a plan for identifying and collecting data that can determine the use and misuse of marijuana in order to determine appropriate policies and programs to promote public health and safety. The plan shall include marijuana-related data regarding (i) poison control center calls; (ii)

hospital and emergency room visits; (iii) impaired driving; (iv) use rates, including heavy or frequent use, mode of use, and demographic information for vulnerable populations, including youth and pregnant women; and (v) treatment rates for cannabis use disorder and any other diseases related to marijuana use. The plan shall detail the categories for which each data source will be collected, including the region where the individual lives or the incident occurred and the age and the race or ethnicity of the individual. The plan shall also include the means by which initial data will be collected as soon as practicable as a benchmark prior to the effective date of an act legalizing marijuana for adult use, the plan for regular collection of such data thereafter, and the cost of the initial and ongoing collection of such data. The plan shall also recommend a timetable and determine the cost for analyzing and reporting the data. The work group, in consultation with the Director of Diversity, Equity, and Inclusion, shall also recommend metrics to identify disproportionate impacts of marijuana legalization, if any, to include discrimination in the Commonwealth's cannabis industry. The work group shall report its findings and recommendations to the Governor and the General Assembly by November 1, 2021. The provisions of this enactment shall become effective in due course.

- Enactment clause #17 provides that the Virginia Department of Education, with assistance from appropriate agencies, local school divisions, and appropriate experts, shall implement a plan to ensure that teachers have access to sufficient information, resources, and lesson ideas to assist them in teaching about the harms of marijuana use among the youth and about substance abuse, as provided in the 2020 Health Standards of Learning. The Department shall (i) review resources currently provided to teachers to determine if additional or updated material or lesson ideas are needed and (ii) provide or develop any additional materials and resources deemed necessary and make the same available to teachers by January 1, 2024. The provisions of this enactment shall become effective in due course.
- Enactment clause #18. That the Secretary of Education, in conjunction with the Virginia Department of Education, shall develop a plan for introducing teachers, particularly those teaching health, to the information and resources available to them to assist them in teaching the 2020 Health Standards of Learning as it relates to marijuana use. Such plan shall include providing professional development webinars as soon as practicable, as well as ongoing periodic professional development relating to marijuana, as well as alcohol, tobacco, and other drugs as appropriate. The plan shall include the estimated cost of implementation and any potential source of funds to cover such cost and shall be submitted to the Governor and the General Assembly by November 1, 2021. The provisions of this enactment shall become effective in due course.
- Enactment clause #19 provides that the Secretary of Education, the State Council of Higher Education for Virginia, the Virginia Higher Education Substance Use Advisory Committee, and the Department of Behavioral Health and Developmental Services shall work with existing collegiate recovery programs to determine what, if any, additional evidence-based efforts should be undertaken for college-aged individuals to promote education and prevention strategies relating to marijuana. The plan shall include the estimated cost of implementation and any potential source of funds to cover such cost and shall be submitted to the Governor and the General Assembly by November 1, 2021. The provisions of this enactment shall become effective in due course.

- Enactment clause #20 provides that the effective July 1, 2021, the Regulations Governing Pharmaceutical Processors (18VAC110-60) promulgated by the Board of Pharmacy (the Board) shall remain in full force and effect and continue to be administered by the Board of Pharmacy until the Board of Directors of the Virginia Cannabis Control Authority (the Authority) promulgates regulations pursuant to the ninth enactment of this act and no later than July 1, 2023. The Board shall provide assistance to the Board of Directors of the Authority in promulgating regulations by July 1, 2023. The provisions of this enactment shall become effective in due course.
- Enactment clause #21 provides that there shall be established a Cannabis Oversight Commission (the Commission), which shall consist of 10 members of the General Assembly. Members shall be appointed as follows: six members of the House of Delegates who are members of the House Committee on Appropriations, House Committee for Courts of Justice, or the House Committee on General Laws to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; and four members of the Senate who are members of the Senate Committee on Finance and Appropriations, the Senate Committee on the Judiciary, or the Senate Committee on Rehabilitation and Social Services to be appointed by the Senate Committee on Rules. The Commission shall elect a chairman and vice-chairman from among its membership; however, the chairman and vice-chairman shall not both be members of the House of Delegates, nor shall both the chairman and vice-chairman be members of the Senate. No recommendation of the Commission shall be adopted if a majority of the House members or a majority of the Senate members appointed to the Commission (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the Commission. The Commission shall exercise the function of overseeing the implementation of the provisions of this act and shall convene regularly in the exercise of that function. The Virginia Cannabis Control Authority (the Authority) shall report to the Commission at the Commission's request. The Commission shall expire on January 1, 2024. The provisions of this enactment shall become effective in due course.
- Enactment clause #22 provides that the initial referendum authorized by § 4.1-629 of the Code of Virginia, as created by this act, on the question of whether the operation of retail marijuana stores shall be prohibited in a particular locality shall be held and results certified by December 31, 2022. A referendum on such question shall not be permitted in a locality after January 1, 2023, unless such referendum follows a referendum held prior to December 31, 2022, and any subsequent referendum, in which a majority of the qualified voters voting in such referendum voted "Yes" to prohibit the operation of retail marijuana stores. The provisions of this enactment shall become effective July 1, 2022.
- Enactment clause #23 provides that the Office of the Executive Secretary shall report to the chairmen of the Senate Committee on the Judiciary, the Senate Committee on Finance and Appropriations, the House Committee on Appropriations, and the House Committee for Courts of Justice by November 1, 2021, and by November 1 each year thereafter regarding the number of civil offenses committed and civil penalties imposed for violations of § 18.2-250.1 of the Code of Virginia, as repealed by this act.
- Enactment clause #24 provides that the Joint Legislative Audit and Review Commission (JLARC) shall (i) analyze the provisions of this act, (ii) compare such provisions to

JLARC Report 542 (2020), and (iii) report its findings to the General Assembly by November 1, 2021.

- Enactment clause #25 provides that the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1289 of the Acts of Assembly of 2020 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice. The provisions of this enactment shall become effective in due course.

**6. Budget Amendment Necessary:** Yes. Items 143 (DOE) and 425 (VSP). See Line 8.

**7. Fiscal Impact Estimates:** Final. See Line #8.

**8. Fiscal Implications:** The proposed bill is expected to impact several state agencies and potentially all counties and cities.

### Revenue Impact

According to the Virginia Department of Taxation, and based upon projected marijuana sales in Virginia as determined by JLARC in conjunction with MPG Consulting, it is estimated that this bill could generate total revenues ranging between \$13.8 million and \$23.0 million in FY 2024; \$67.4 million and \$112.6 million in FY 2025; \$103.8 million and \$173.0 million in FY 2026; and \$135.6 million and \$225.9 million in FY 2027.

The higher end of this range reflects optimistic estimates of illegal market conversion, relative equilibrium between supply and demand, and that no other states or the federal government also legalize these products. The lower end reflects less optimistic estimates of illegal market conversion, possible periods of disequilibrium between supply and demand, and the possibility that surrounding states or the federal government also would legalize marijuana. The FY 2024 estimates are based on five months of collections.

Below is the distribution of total revenues based upon the lower end estimates:

	<b>FY 2024*</b>	<b>FY 2025</b>	<b>FY 2026</b>
GF - Unrestricted	\$1,200,000	\$5,700,000	\$8,800,000
GF - Restricted	\$600,000	\$2,800,000	\$4,300,000
Transportation	\$500,000	\$2,300,000	\$3,500,000
Local Option	\$500,000	\$2,500,000	\$3,900,000
Other	\$300,000	\$1,200,000	\$1,900,000
Pre-K (40 percent)	\$4,300,000	\$21,200,000	\$32,600,000
Cannabis Equity (30 percent)	\$3,200,000	\$15,900,000	\$24,400,000
Substance Use Disorder (25 percent)	\$2,700,000	\$13,200,000	\$20,300,000
Public Health Programs (5 percent)	\$500,000	\$2,600,000	\$4,100,000

21 Percent Excise Rate + Retail Sales and Use Tax	\$13,800,000	\$67,400,000	\$103,800,000
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Below is the distribution of total revenues based upon the higher end estimates:

	<b>FY 2024*</b>	<b>FY 2025</b>	<b>FY 2026</b>
GF - Unrestricted	\$1,900,000	\$9,500,000	\$14,600,000
GF - Restricted	\$1,000,000	\$4,700,000	\$7,200,000
Transportation	\$800,000	\$3,800,000	\$5,800,000
Local Option	\$900,000	\$4,200,000	\$6,500,000
Other	\$400,000	\$2,100,000	\$3,200,000
Pre-K (40 percent)	\$7,200,000	\$35,300,000	\$54,300,000
Cannabis Equity (30 percent)	\$5,400,000	\$26,500,000	\$40,700,000
Substance Use Disorder (25 percent)	\$4,500,000	\$22,100,000	\$33,900,000
Public Health Programs (5 percent)	\$900,000	\$4,400,000	\$6,800,000
21 Percent Excise Rate + Retail Sales and Use Tax	\$23,000,000	\$112,600,000	\$173,000,000

The Virginia Department of Agriculture and Consumer Services (VDACS) may generate additional revenue from the licensing of hemp testing laboratories. The license fee likely will be an amount not to exceed \$50. The potential number of hemp testing laboratories that may be licensed is unknown, therefore, the revenue that could be generated cannot be determined. The bill also provides that the VDACS Commissioner may assess civil penalties: (1) if a tested hemp product exceeds the maximum level of allowable contamination, (2) for violations of labeling, testing and advertising of hemp products, or (3) for failure to destroy the hemp product intended for smoking or consumption whose testing sample exceeded the maximum level of allowable contamination. The penalty ranges from \$100 to \$5,000 with all penalties collected deposited into the state treasury. It is reasonable to conclude that some revenue will be generated from civil penalties, however, the amount collected cannot be determined.

### **Expenditure Impact**

The following table summarizes the estimated expenditure impact of this legislation:

	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
<b>Virginia State Police (VSP)</b>				
1 Fingerprint Technician Trainee FTE	0	\$81,026	\$81,026	\$81,026
1 Program Support Technician FTE	0	\$72,537	\$72,537	\$72,537
Furniture	0	\$9,722	\$0	\$0
IT Hardware	0	\$3,982	\$3,080	\$3,080
<b>Total Costs - VSP</b>	<b>\$0</b>	<b>\$167,267</b>	<b>\$156,643</b>	<b>\$156,643</b>

**Department of Education (DOE)**

Contractor Costs	0	0	\$50,000	\$0
Resource Development	0	0	\$100,000	\$0
Online Module Development	0	0	\$150,000	\$0
Hosting/Maintenance Fees	0	0	\$10,000	\$10,000
<b>Total Costs - DOE</b>	<b>\$0</b>	<b>\$0</b>	<b>\$310,000</b>	<b>\$10,000</b>

**Department of Corrections (DOC)**

Impact on Prison Bed Space Needs	0	\$50,000	\$0	\$0
<b>Total Costs – DOC</b>	<b>\$0</b>	<b>\$50,000</b>	<b>\$0</b>	<b>\$0</b>

<b>Total Costs for VSP, VDOE, and DOC</b>	<b>\$0</b>	<b>\$217,267</b>	<b>\$466,643</b>	<b>\$166,643</b>
<b>Virginia Cannabis Control Authority</b>	<b>\$0</b>	<b>\$4,000,000</b>	<b>\$9,000,000</b>	<b>\$12,000,000</b>
<b>Virginia Retirement System (VRS)</b>	<b>\$0</b>	<b>\$195,000</b>	<b>\$0</b>	<b>\$0</b>

The following narrative details the expenditure estimates in the table above.

**Virginia State Police (VSP)**

According to VSP, the bill requires fingerprint based criminal history record checks be completed on all individuals that apply to be licensed through the Virginia Cannabis Control Authority to operate as a marijuana establishment. The fingerprints of the licensee are to be forwarded to the Department of State Police, Central Criminal Records Exchange (CCRE) so that criminal history record checks may be processed. The CCRE is to return the results of the criminal history record check to the Virginia Cannabis Control Authority Board for their review.

In the recent Joint Legislative Audit and Review Commission (JLARC) report outlining the key considerations for the legalization of marijuana, it was estimated that approximately 1,550 licenses would be issued for marijuana establishments. Currently, the Non-Criminal Justice (NCJ) section of the CCRE is tasked with processing criminal history record background checks.

It is anticipated that fingerprint submissions would be cards, as opposed to electronic submissions. Within the fingerprint-based criminal record check process, fingerprint technicians are used to establish the identification of the fingerprints in order to match the information to the appropriate criminal history record. Once this match, or no match takes place, a program support technician in the NCJ section processes the criminal history record results and forwards the information to the requesting agency. VSP estimates needing one fingerprint technician and one program support technician to process up to 10,000 fingerprint cards per year. These positions are estimated to cost \$81,026 annually for the fingerprint technician and \$72,537 annually for the program support technician.

### **Department of Education (DOE)**

Enactment clauses of the bill require DOE to implement a plan to ensure that teachers have access to information, resources, and lesson ideas to teach about the harms of marijuana use. It requires DOE to review currently available resources to determine if additional or updated materials are needed and to provide or develop additional materials as needed. According to DOE, the agency would need one-time funding of \$50,000 for additional contract assistance to develop the plan and review all resources. In addition, the agency would need one-time funding of \$100,000 to develop new resources.

The bill also requires the development of a plan for introducing teachers to the information and resources available to assist them in teaching the 2020 Health Standards of Learning as it relates to marijuana use. The plan must include providing professional development webinars as well as ongoing professional development relating to marijuana. In order for these professional development opportunities to be practical, DOE estimates it would need to develop web-based modules that can be accessed by teachers in real-time. One-time development costs for online modules are estimated to be \$150,000. DOE estimates an additional \$10,000 per year in ongoing costs related to hosting and maintenance fees. The estimated total state impact of the bill to DOE would be \$310,000 in FY 2023 and \$10,000 per year beginning in FY 2024.

### **Criminal Sentencing Impact**

According to the Virginia Sentencing Commission while the proposal would eliminate certain criminal penalties related to marijuana from the Code and reduce penalties for other offenses, it would establish a number of new misdemeanors and felonies for engaging in activities related to the cultivation, manufacture, testing and sale of marijuana without the required license or otherwise engaging in prohibited practices related to the production, sale, etc., of marijuana. If enacted, the proposal also specifies that monthly tax returns filed by licensees must be made under oath, which may have felony implications for making a material false statement on the return.

The net effect on the number of convicted individuals and the impact on judicial sentencing patterns cannot be estimated. Therefore, the net impact on the future state-responsible (prison) bed space needs of the Commonwealth cannot be determined. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 56, 2021 Acts of Assembly, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the necessary



appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

The total anticipated fiscal impact as a result of the proposed legislation on VSP, DOE, and DOC is \$0 in FY 2021, \$217,267 in FY 2022, \$466,643 in FY 2023, and \$166,643 in FY 2024.

### **Virginia Cannabis Control Authority**

Establishing the Virginia Cannabis Control Authority as a standalone agency likely will require funding to hire personnel, acquire office space and other operational costs. The bill provides, as allowed by the Governor, the Board may deduct from the net profits quarterly a sum for the creation of a reserve fund not exceeding the sum of \$2.5 million in connection with the administration and to provide for the depreciation on the buildings, plants, and equipment owned, held, or operated by the Board. However, JLARC estimates that the first year cost could be \$3 to \$4 million with second year cost coming in at \$7 to \$9 million. Once fully operational, it is anticipated that ongoing operational costs will be \$9 to \$12 million. These are estimated costs based on other states. It is estimated that the new agency would need funding support for at least the first 2 years of operations before sufficient revenues are generated to cover the cost of operations.

### **Virginia Retirement System (VRS)**

According to the Virginia Retirement System (VRS), the substitute bill impacts three of the agency's plans: 1) Virginia Retirement System (VRS), 2) Virginia Law Officers' Retirement System (VaLORS) and 3) Optional Retirement Plan for Political Appointees (ORPPA). In addition, there may be a need for administrative implementation of Line of Duty Act (LODA) benefits. The need for VRS to allocate resources to incorporate the new Virginia Cannabis Control Authority into its plans will depend on the overall implementation schedule for creating the new Authority and the appointing or hiring of employees. VRS estimates its implementation cost to be approximately \$145,000. This figure does not include the impact to future contribution rates for VRS or VaLORS, the premium rates for LODA, or the impact on the funded status of the plans. Additionally, if implementation for the new Authority impacts the work VRS is doing to implement the new Cardinal system, there may be an additional cost of \$50,000.

### **Office of the Executive Secretary of the Supreme Court (OES)**

According to the Office of the Executive Secretary of the Supreme Court, the bill is not expected to have a material fiscal impact on the court system.

### **Office of the Attorney General (OAG)**

According to the Office of the Attorney General, the bill is not expected to have a material fiscal impact on its agency operations.

### **Virginia Indigent Defense Commission (VIDC)**

Since marijuana has already been decriminalized, VIDC does not expect the bill will have a material fiscal impact on its agency operations.

### **Virginia Department of Agriculture and Consumer Services (VADACS)**

The bill also requires VADACS to adopt regulations related to edible marijuana products. Currently, VADACS handles food safety in the Commonwealth and conducts inspections of

food establishments. At this time, the agency is unable to determine the increase in inspections that may result from this bill. Additional resources may be needed in future years.

#### **Department of Motor Vehicles (DMV)**

According to the DMV, the bill is not expected to have a material fiscal impact on its agency operations.

#### **Department of Criminal Justice Services (DCJS)**

According to Department of Criminal Justice Services (DCJS), the proposed bill is not expected to have material fiscal impact on agency operations. Although it is likely that local probation agencies will see some cost reductions from already-passed decriminalization legislation, no further cost reductions are expected from any future legalization efforts. Additionally, DCJS staff indicate that projected savings from decriminalization may not be realized because of other recent legislative changes that could increase local agencies' workloads.

#### **Drug Offender Assessment Fund**

The marijuana bill repeals two current laws related to marijuana possession: §18.2-248.1, which presumes that the possession of no more than one ounce is for personal use and §18.2-250.1 which assesses a \$25 civil penalty for unlawful possession of marijuana, with penalties deposited into the Drug Offender Assessment Fund. The Fund supports community-based probation and local pretrial services agencies and the Office of the Executive Secretary of the Supreme Court of Virginia for the operation of drug treatment court programs. The bill also proposes § 4.1-1100, which establishes that, except as otherwise provided in the new subtitle and notwithstanding any other provision of law, a person 21 years-of-age or older may lawfully possess on his person or in any public place not more than one ounce of marijuana or an equivalent amount of marijuana product as determined by regulation promulgated by the Board of Directors of the Virginia Cannabis Control Authority. Any person who possesses on his person or in any public place marijuana or marijuana products in excess of the amounts set forth by the Board is subject to a civil penalty of no more than \$25. A violation of this section is a civil offense, and any civil penalties collected are to be deposited into the Drug Offender Assessment and Treatment Fund established pursuant to § 18.2-251.02. This legislation may impact the amount of revenue deposited into the Drug Offender Assessment and Treatment 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 provision cannot be determined.

#### **Other Agencies**

The costs associated with developing and implementing a health, safety, and safe driving campaign (Enactment #11) cannot be determined at this time. These ongoing costs will be dependent on the development of the implementation of these initiatives by the respective secretariats.

**9. Specific Agency or Political Subdivisions Affected:** Department of Taxation, Department of Criminal Justice Services, Virginia State Police, Department of Forensic Science, Virginia Criminal Sentencing Commission, Virginia Indigent Defense Commission, Office of the Attorney General, Courts, Department of Education, Department of Motor Vehicles, Virginia

Department of Agriculture and Consumer Services, Virginia Retirement System, localities, and local law enforcement agencies.

**10. Technical Amendment Necessary:** No

**11. Other Comments:** The VSP impact is based on a delayed implementation date of July 1, 2025 for the changes required under § 19.2-389.3. The Conference report provides \$13.1 million from the general fund the second year for one-time and ongoing costs to update and replace the information systems to implement automatic expungement process for certain offenses related to HB2113 and SB1339. The same system would be used to implement the provisions of SB1406.