

## Department of Planning and Budget 2023 Fiscal Impact Statement

**1. Bill Number:** HB1973

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

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

**2. Patron:**    Leftwich

**3. Committee:** Courts of Justice

**4. Title:**    Tetrahydrocannabinol; industrial hemp; regulated hemp products.

**5. Summary:** Establishes provisions for the registration of a retail facility for regulated hemp products, as defined in the bill, establishes product packaging, labeling, and testing requirements for such products, and creates a civil penalty of up to \$1,000 for certain violations relating to 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 and creates a Class 1 misdemeanor and a civil penalty of up to \$10,000 for certain violations. The bill clarifies that any substances containing a concentration of total tetrahydrocannabinol (THC), as defined in the bill, of more than 0.3 percent, including a hemp product or industrial hemp extract, are included in the definition of marijuana and also clarifies that the definition of marijuana does not include any substance containing tetrahydrocannabinol 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 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.

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

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

**7b. Revenue Impact:** Indeterminate

**8. Fiscal Implications:** This bill will 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 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; therefore, the agency is unable to estimate the amount of revenue that might be realized from this bill as a result of the newly established registration fee.

Additionally, this bill establishes several new \$10,000 civil penalties and raises to \$500 several local civil penalties. It is unclear whether revenue that would be generated from the new civil penalties is to be deposited to the general fund or to a nongeneral fund. Revenue generated from the local civil penalties is to be deposited into the local treasury of the locality which instituted the action. VDACS is unable to determine how many entities will violate the provision of the act and therefore unable to determine the number of civil penalties that may be issued.

This bill creates a new Class 1 misdemeanor. 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. The provisions of this bill could also increase the number of individuals convicted of a Class 6 felony.

For someone convicted of a Class 6 felony, a judge has the option of sentencing the offender to a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both. Therefore, this proposal could result in an increase in the number of persons sentenced to jail or prison.

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 and \$15.00 a day for each state-responsible prisoner. It also funds a considerable portion of the jails' operating costs, e.g., correctional officers. The state's share of these costs on a per prisoner, per day basis 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.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 2, 2022 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

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.

It is also 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.

Although an impacted agency, the Department of Forensic Science (DFS) does not anticipate any material fiscal impact from this bill. DFS has already developed and validated a method to enable marijuana analysis considering all isomers of THC. After consulting with VDACS, the Division of Consolidated Laboratory Services within the Department of General Services, and Commonwealth's Attorneys, at this time, DFS anticipates that the number of cases that may be submitted to DFS will be minimal.

The Cannabis Control Authority, Virginia State Police, and the 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 Forensic Science, Office of the Attorney General, courts, jails, Commonwealth's Attorneys, Department of General Services

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

**11. Other Comments:** This is the companion to SB903.