

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:** Courts of Justice

4. **Title:** Marijuana; tetrahydrocannabinol; hemp products; civil penalty.

5. **Summary:** Modifies the definition of "marijuana" in drug laws, the Cannabis Control Act, and the Drug Control Act to (i) include any substance containing (a) a total tetrahydrocannabinol concentration that exceeds 0.3 percent or (b) more than one milligram of tetrahydrocannabinol per 100 grams of total product weight and (ii) exclude certain hemp products. The bill defines "tetrahydrocannabinol" to include any naturally occurring or synthetic tetrahydrocannabinol (THC), including its salts, isomers, or salts of isomers, and removes references in the Code to delta-9 tetrahydrocannabinol. The bill directs the Board of Agriculture and Consumer Services to adopt regulations that require hemp products not intended for human consumption, orally or by inhalation, to include a bittering agent that renders the products unpalatable. The bill creates a \$5,000 civil penalty for persons that willfully commit a second or subsequent violation of certain provisions of the Virginia Consumer Protection Act related to products containing tetrahydrocannabinol.

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

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

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2024	\$50,000	-	general

8. **Fiscal Implications:** It is anticipated that any costs to the Virginia Department of Agriculture and Consumer Services (VDACS) can be absorbed, unless VDACS is required to enforce a requirement that hemp products that are not intended for human consumption contain a bittering agent. If VDACS is required to enforce such a requirement, it is anticipated that this bill will have an indeterminate fiscal impact on the agency.

The bill creates a \$5,000 civil penalty for persons that willfully commit a second or subsequent violation of certain provisions of the Virginia Consumer Protection Act related to products containing THC. Proceeds of all fines and penalties collected for offenses committed against the Commonwealth are paid into the state treasury to the credit of the Literary Fund.

By expanding the definition of marijuana to cover additional variations of THC, this bill may expand the applicability of existing misdemeanor and felony offenses. The number of additional individuals who may be convicted of such offenses cannot be estimated with existing data; however, offenders affected by the proposed legislation may be sentenced similarly to those convicted under existing marijuana laws.

The 2021 General Assembly (Special Session I) adopted legislation to establish a licensing and regulation system for cannabis cultivation facilities, cannabis manufacturing facilities, cannabis testing facilities, and retail cannabis stores, along with penalties for violation of the requirements, effective July 1, 2024. The legislation also legalized simple possession of an ounce or less of marijuana by persons who are at least 21 years of age and provided that persons 21 years of age or older may cultivate up to four marijuana plants at home for personal use. Possession of more than one ounce but less than four ounces of marijuana on one's person or in a public place is subject to a civil penalty of up to \$25. Possession of four ounces but not more than one pound of marijuana is a Class 3 misdemeanor or, for a second or subsequent offense, a Class 2 misdemeanor. Possession of more than one pound of marijuana on one's person or in a public place is a felony punishable by 1 to 10 years. Violation of the home cultivation law is a Class 6 felony if the individual is cultivating 50 to 100 plants or, if the individual is cultivating more than 100 plants, a felony punishable by imprisonment of 1 to 10 years.

Currently, sale, distribution, or possession with intent to distribute one ounce or less of marijuana is a Class 1 misdemeanor. Distribution of more than one ounce up to five pounds of marijuana is a Class 5 felony, while distribution of more than five pounds and manufacture of marijuana are both felonies punishable by up to 30 years in prison. A third or subsequent conviction for felony distribution of marijuana is punishable by up to life in prison and requires a five-year mandatory minimum prison sentence. The Code currently includes additional felonies for transporting certain amounts of marijuana into the Commonwealth, distributing marijuana to a minor, involving a minor in the distribution of marijuana, and distributing near schools or other specified properties.

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. Anyone convicted of a Class 2 misdemeanor is subject to a sentence of up to six months in jail and a fine of not more than \$1,000, either or both. A Class 3 misdemeanor is punishable by a fine of up to \$500. 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 fiscal impact is indeterminate.

A Class 5 felony is punishable by one to ten years in prison. 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 misdemeanor 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.

Item 404 T. of the 2022 amended budget (HB1400/SB800) includes \$50,000 in FY 2024 from the general fund to cover the estimated net increase in the operating cost of adult correctional facilities resulting from the enactment of legislation that adjusts the definition of marijuana to include substances, including hemp products, that contain a certain amount of tetrahydrocannabinol.

Pursuant to § 30-19.1:4, 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.

Neither the Office of the Attorney General nor the Department of Health Professions anticipates any impact from this bill.

It is anticipated that the Department of Forensic Science (DFS) can absorb any costs associated with this bill.

Estimates from the Virginia Cannabis Control Authority are not yet available.

- 9. Specific Agency or Political Subdivisions Affected:** Virginia Department of Agriculture and Consumer Services, Office of the Attorney General, Virginia Cannabis Control Authority, Department of Forensic Science, Department of Health Professions, Department of Juvenile Justice, courts, jails, localities

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** None.