

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: Passed House

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

5. Summary: 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 that laboratories that test hemp products that are consumed orally or by inhalation have a registration with the U.S. Drug Enforcement Administration. 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 caps the total tetrahydrocannabinol in an industrial hemp extract product when offered for retail sale at a total tetrahydrocannabinol (THC) concentration that is no more than 0.3 percent and contains no more than two milligrams of total THC per package. The bill also clarifies that the definition of marijuana does not include any substance containing THC 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 THC from the Schedule I list of controlled substances and permits the Board of Pharmacy to schedule, deschedule, or reschedule a tetrahydrocannabinol isomer, ester, ether, salt, except delta-9-THC, or salts of such isomer, ester, or ether in accordance with the provisions of the bill. Additionally, the bill establishes a \$5,000 civil penalty for willful and subsequent violations of certain fraudulent transactions and directs the deposit of the revenue to the Literary Fund.

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. Additionally, the agency anticipates an increase in its investigative workload as a result of the substitute's provision authorizing the Commissioner of Agriculture and

Consumer Services to inquire into possible violations of the Virginia Consumer Protection Act (VCPA) restrictions on the sale of substances containing THC that are consumed orally or by inhalation. 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. HB1400/SB800, as introduced, includes \$2.2 million from the general fund and 15 full-time equivalent positions (FTEs) 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. The bill creates a \$5,000 civil penalty for persons that willfully commit a second or subsequent violation of certain provisions of the VCPA 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.

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. 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 Department of Behavioral Health and Developmental Services, Virginia Department of Health, and Department of Health Professions do not anticipate any impact from this bill.

It is anticipated that the Department of Forensic Science and the Virginia Cannabis Control Authority can absorb any costs associated with this bill.

- 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 Behavioral Health and Developmental Services, Virginia Department of Health, Department of Health Professions, Department of Juvenile Justice, courts, jails, localities

10. Technical Amendment Necessary: No.

11. Other Comments: None