

## **Department of Planning and Budget**

### **2022 Fiscal Impact Statement**

**1. Bill Number:** SB391S3

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

**2. Patron:** Ebbin

**3. Committee:** Senate Committee on Rehabilitation and Social Services

**4. Title:** Cannabis retail market

**5. Summary:** The substitute bill establishes a framework for the creation of a retail marijuana market in the Commonwealth.

The bill amends § 2.2-2499.8 (Cannabis Equity Reinvestment Fund) to allow moneys from the Fund to be used to cover the staffing and administrative costs of the Cannabis Equity Reinvestment Board. Expenditures for staffing and administration are to be limited to those that are reasonable and necessary for carrying out the powers and duties of the Cannabis Equity Reinvestment Board.

The bill amends § 3.2-3906 to require the Board of Agriculture and Consumer Services (Board) to establish criteria for or a list of pesticides that may be used on cannabis cultivated in compliance with Chapter 41.1 (§ 3.2-4112 et seq.) or the Cannabis Control Act (§ 4.1-600 et seq.). The bill adds Article 6 (Edible Marijuana Products and Edible Hemp Products) which requires the Agriculture Commissioner to inspect locations where edible marijuana products are manufactured (§ 3.2-5145.8) and to adopt and enforce regulations (§ 3.2-5145.9).

The bill amends § 4.1-603 (Cannabis Public Health Advisory Council; purpose; membership; quorum; meetings; compensation and expenses; duties) by increasing the membership of the Cannabis Public Health Advisory Council from 21 to 24 members, one of whom must be a person with expertise in marijuana consumer safety, and one of whom must be a representative of a marijuana testing laboratory that has operated in the Commonwealth for no less than one year.

The bill places the regulation of regulated hemp products under the authority of the Cannabis Control Authority (§ 4.1-604).

The bill establishes that the Cannabis Control Authority may not issue more than 400 retail marijuana store licenses (§ 4.1-606).

The bill establishes licensure requirements and civil penalties for licensees who refuse to pay (§ 4.1-700 through § 4.1-703). The bill authorizes the Cannabis Control Authority (CCA) to issue marijuana cultivation facility licenses (§ 4.1-800), marijuana manufacturing facility

license (§ 4.1-801), marijuana testing facility licenses (§ 4.1-802), marijuana wholesaler license (§ 4.1-803) and retail marijuana store licenses (§ 4.1-804). The annual fees on state licenses are to be determined by the CCA Board (§ 4.1-1001). Except as otherwise permitted by Board regulation promulgated pursuant to subdivision C 4 of § 4.1-606, no person can be granted or have interest in a license in more than one of the following license categories: marijuana cultivation facility license, marijuana manufacturing facility license, marijuana wholesaler license, retail marijuana store license, or marijuana testing facility license. Any pharmaceutical processor that wishes to possess a license in more than one license category pursuant to this subsection must (a) pay a \$6 million fee to the Board, unless the processor has already paid a \$6 million fee to the Board to engage in the lawful sale of cannabis products prior to January 1, 2024, (b) in the case of an industrial hemp processor, pay a \$500,000 fee to the Board, and (c) submit a diversity, equity, and inclusion plan to the Cannabis Business Equity and Diversity Support Team (the Support Team) for approval and, upon approval, implement such plan in accordance with the requirements set by the Support Team. Fees collected by the Board pursuant to this subsection must be allocated to (1) the Virginia Cannabis Equity Loan Fund or (2) the Virginia Cannabis Equity Reinvestment Fund (§ 4.1-805).

The CCA Board may also suspend or revoke licenses for certain violations and impose civil penalties (§ 4.1-901 through § 4.1-904).

The bill establishes that a tax of 21 percent is levied on the sale in the Commonwealth of any retail marijuana, retail marijuana products, marijuana paraphernalia sold by a retail marijuana store, non-retail marijuana, and non-retail marijuana products. This tax is in addition to the Virginia Retail Sales and Use Tax. Any locality may by ordinance levy a three percent tax on any taxable sale (§ 4.1-1003 and § 4.1-1004). Any locality that enacts an ordinance, must within 30 days, notify the Authority and any retail marijuana store in such locality of the ordinance's enactment.

With the exception of a licensee in the course of his duties related to such licensee's marijuana establishment, any person who possesses on his person or in any public place (i) more than four ounces but not more than one pound of marijuana or an equivalent amount of marijuana product as determined by regulation promulgated by the Board is guilty of a Class 3 misdemeanor and, for a second or subsequent offense, a Class 2 misdemeanor. With the exception of a licensee in the course of his duties related to such licensee's marijuana establishment, any person who possesses in his residence or in any place other than a public place more than four pounds of marijuana or an equivalent amount of marijuana product as determined by regulation promulgated by the Board is guilty of a felony punishable by a term of imprisonment of not less than one year nor more than 10 years and a fine of not more than \$250,000, or both (§ 4.1-1100).

The bill establishes the following penalties for violations of § 4.1-1101 (Home cultivation of marijuana for personal use; penalties) as follows:

- For possession of more than four marijuana plants but no more than 10 marijuana plants, (i) a civil penalty of \$250 for a first offense, (ii) a Class 3 misdemeanor for a second offense, and (iii) a Class 2 misdemeanor for a third and any subsequent offense;
- For possession of more than 10 but no more than 49 marijuana plants, a Class 1 misdemeanor;
- For possession of more than 49 but no more than 100 marijuana plants, a Class 6 felony; and
- For possession of more than 100 marijuana plants, a felony punishable by a term of imprisonment of not less than one year nor more than 10 years and a fine of not more than \$250,000, or both.

The bill establishes criminal and civil penalties for the illegal cultivation or manufacture of marijuana or marijuana products (§ 4.1-1102) and the illegal sale of marijuana or marijuana products in general (§ 4.1-1103). Section 4.1-1106 also sets forth penalties, forfeitures for purchasing retail marijuana or retail marijuana products for one to whom they should not be sold to, and § 4.1-1111 details the penalties for the illegal importation, shipment, and transportation of marijuana or marijuana products. Additionally, §4.1-1113 through §4.1-1119 provides for criminal penalties for various violations of Chapter 11 (Possession of Retail Marijuana and Retail Marijuana products).

Section 4.1-1105 establishes that no person to whom retail marijuana or retail marijuana products may not lawfully be sold under § 4.1-1104 may consume, purchase, or possess, or attempt to consume, purchase, or possess, any marijuana or marijuana products, except (i) pursuant to § 4.1-700 or (ii) by any federal, state, or local law-enforcement officer or his agent when possession of marijuana or marijuana products is necessary in the performance of his duties. Violations of this regulation could result in a civil penalty of no more than \$25 and the court may require the accused to enter a substance abuse treatment or education program or both, if available, that in the opinion of the court best suits the needs of the accused. Any civil penalties collected are to be deposited into the Drug Offender Assessment and Treatment Fund.

The bill establishes the process by which marijuana and marijuana products may be forfeited, confiscation proceedings, and punishment for related violations (§ 4.1-1301 through § 4.1-1312).

The bill requires the Cannabis Control Authority Board to establish regulations for marijuana and regulated hemp product testing (§ 4.1-1400).

The bill amends § 9.1-1101 to make the Department of Forensic Science responsible for determining the proper methods for detecting the concentration of tetrahydrocannabinol (THC) in substances for the purposes of Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1 and §§ 54.1-3401 and 54.1-3446. The testing methodology must use post-decarboxylation testing or other equivalent method and must consider the potential conversion of tetrahydrocannabinol

acid (THC-A) into THC. The test must include the total available THC derived from the sum of the THC and THC-A content.

The bill amends §18.2-247 to remove “marijuana” from being considered a controlled substance.

The bill amends §18.2-248.01 (Transporting controlled substances into the Commonwealth; penalty) to state that except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it is unlawful for any person to transport into the Commonwealth by any means with intent to sell or distribute one ounce or more of cocaine, coca leaves, or any salt, compound, derivative, or preparation thereof as described in Schedule II of the Drug Control Act or one ounce or more of any other Schedule I or II controlled substance. If convicted, the person must be sentenced to not less than five years nor more than 40 years imprisonment, three years of which must be a mandatory minimum term of imprisonment, and a fine not to exceed \$1 million. A second or subsequent conviction hereunder shall be punishable by a mandatory minimum term of imprisonment of 10 years, which shall be served consecutively with any other sentence.

The bill amends § 19.2-303.03 (Modification of sentence for marijuana-related convictions) to establish that notwithstanding other provisions of law or rule of court, if a person who (i) was convicted of a felony offense in violation of § 18.2-248, 18.2-248.01, 18.2-248.1, 18.2-250, 18.2-255, 18.2-255.2, 18.2-256, 18.2-257, 18.2-258, 18.2-258.1, 18.2-258.02, 18.2-265.3, or 18.2-474.1 as it relates to marijuana committed prior to July 1, 2021; (ii) was sentenced to jail or to the Department of Corrections or placed on community supervision as defined in § 53.1-1 for such conviction; and (iii) remains incarcerated in a state or local correctional facility or secure facility, as defined in § 16.1-228, serving the sentence for such conviction or a combination of such convictions or remains on community supervision as defined in § 53.1-1 for such conviction or a combination of such convictions on July 1, 2022, the circuit court that entered the original judgment or order shall schedule a hearing by July 1, 2023, to consider modification of such person's sentence. The Commonwealth shall be made party to the proceeding and receive notice of such hearing.

A person who has been convicted of a felony violation of former § 18.2-248.1 or a violation of subsection A of § 18.2-265.3 as it relates to marijuana, or charged under either section and the charge is deferred and dismissed, may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the arrest, charge, or conviction. A person will not be required to pay any fees or costs for filing a petition pursuant to this section if such person files a petition to proceed without the payment of fees and costs, and the court with which such person files his petition finds such person to be indigent (§ 19.2-392.2:4). The circuit court must make a decision as to whether to modify a sentence within 60 days following the sentence modification hearing. If modification of a sentence is denied, the court must file with the record of the case a written explanation for the denial and shall provide a copy of such written explanation to the person whose sentence was considered for modification, his attorney if he is represented, and to the attorney for the Commonwealth. If the court enters an order to modify a sentence pursuant to this section, the clerk of the circuit court must cause a copy of such order to be forwarded to the Virginia

Criminal Sentencing Commission, the Department of State Police, and the state correctional facility where the individual is incarcerated within 10 days.

The bill contains enactment clauses:

Enactment #2 - The Board of Pharmacy may suspend the privileges of a pharmaceutical processor or industrial hemp processor to engage in sales under this enactment for substantial and repeated violations of the provisions of this enactment.

Enactment #3 - A tax of 21 percent must be levied on the sale of cannabis products by pharmaceutical processors or industrial hemp processors pursuant to this enactment, which must be in addition to any tax imposed under Chapter 6 (§ 58.1-600 et seq.) of Title 58.1 of the Code of Virginia or any other provision of federal, state, or local law. Pharmaceutical processors and industrial hemp processors must remit such tax to the Department of Taxation. The Department of Taxation must deposit tax revenues from the 21 percent excise tax, as well as the fees received from pharmaceutical processors and industrial hemp processors pursuant to § 1, into the account of the Virginia Cannabis Control Authority to be used to provide loans to qualified social equity applicants who are in need of capital for the start-up of a licensed cannabis business.

Any locality may by ordinance levy a three percent tax on the sale of cannabis products by pharmaceutical processors or industrial hemp processors pursuant to this enactment. Such local tax must be in addition to any local sales tax imposed under Chapter 6 (§ 58.1-600 et seq.) of Title 58.1 of the Code of Virginia, any food and beverage tax imposed under Article 7.1 (§ 58.1-3833 et seq.) of Chapter 38 of Title 58.1 of the Code of Virginia, and any excise tax imposed on meals under § 58.1-3840 of the Code of Virginia. If a town imposes a tax under this section, any tax imposed by its surrounding county under this section must not apply within the limits of the town. Nothing in this section should be construed to prohibit a locality from imposing any tax authorized by law on a person or property regulated under this enactment. Any locality that enacts an ordinance pursuant to this section must, within 30 days, notify the Board of Pharmacy, the Virginia Cannabis Control Authority, and any pharmaceutical processor or industrial hemp processor in such locality of the ordinance's enactment. The ordinance must take effect on the first day of the second month following its enactment. Any local tax levied under this section must be remitted to Department of Taxation in the same manner as the 21 percent state excise tax and, thereafter, disbursed to the applicable locality.

Enactment #4 - The Board of Pharmacy and the Department of Taxation may assess and collect fees from each pharmaceutical processor and industrial hemp processor that sells cannabis products pursuant to this enactment in an amount sufficient to recover the costs associated with the implementation of the provisions of this enactment.

Enactment #5 - The provisions of this enactment will not apply to or otherwise affect the sale of cannabis products to registered patients with written certifications by pharmaceutical processors pursuant to Article 4.2 (§ 54.1-3442.5 et seq. of the Code of Virginia) of the Drug Control Act.

Enactment #6 - The Board of Pharmacy must, after consultation with the Board of Directors of the Virginia Cannabis Control Authority, determine which industrial hemp processors must be permitted to conduct sales and related activities pursuant to the provisions of this enactment and develop criteria for making such determinations. Such criteria must comply with the following: (i) no more than 10 industrial hemp processors can be permitted to conduct sales and related activities pursuant to the provisions of this enactment and (ii) an industrial hemp processor may not conduct sales and related activities pursuant to the provisions of this enactment unless the industrial hemp processor was registered with the Commissioner of Agriculture and Consumer Services pursuant to Chapter 41.1 (§ 3.2-4112 et seq.) of Title 3.2 of the Code of Virginia prior to March 31, 2021, and has processed no less than 40,000 pounds of hemp.

Enactment #7 - No agent or employee of a pharmaceutical processor, cannabis dispensing facility, or industrial hemp processor can be prosecuted under Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1 or § 18.2-248, 18.2-248.1, or 18.2-250 of the Code of Virginia for possession or manufacture of marijuana or for possession, manufacture, or distribution of cannabis products, subject to any civil penalty, denied any right or privilege, or subject to any disciplinary action by a professional licensing board if such agent or employee (i) possessed or manufactured such marijuana for the purposes of producing cannabis products in accordance with the provisions of this enactment or (ii) possessed, manufactured, or distributed such cannabis products that are consistent with generally accepted cannabis industry standards in accordance with the provisions of this enactment.

Enactment #8 - The Board of Directors of the Virginia Cannabis Control Authority must promulgate regulations governing sales, cultivation, extraction, processing, manufacturing, wholesaling, and other related activities conducted pursuant to this enactment that must model, to the greatest extent practicable, the regulations of the Board of Pharmacy governing pharmaceutical processors set forth in 18VAC110-60 of the Virginia Administrative Code, subject to the exceptions and requirements set forth in § 1 of this enactment. The Board of Directors of the Virginia Cannabis Control Authority's initial adoption of regulations necessary to implement the provisions of this enactment must be exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), except that the Board of Directors must provide an opportunity for public comment on the regulations prior to adoption. Upon the effective date of such regulations adopted by the Board of Directors of the Virginia Cannabis Control Authority, (i) oversight of all sales, cultivation, extraction, processing, manufacturing, wholesaling, and other related activities conducted pursuant to this enactment must transfer from the Board of Pharmacy to the Board of Directors of the Virginia Cannabis Control Authority and (ii) the Board of Directors of the Virginia Cannabis Control Authority must be vested with all powers and duties conferred upon the Board of Pharmacy pursuant to this enactment.

Enactment #9 - The provisions of this enactment shall become effective on September 15, 2022.

Enactment #10 - That the provisions of this enactment will expire when the Virginia Cannabis Control Authority provides written notice to the Division of Legislative Services that pharmaceutical processors and industrial hemp processors engaging in the sale of cannabis products pursuant to the provisions of this enactment are authorized by the Virginia Cannabis Control Authority to apply for and be granted licenses to cultivate, manufacture, wholesale, or sell at retail to consumers 21 years of age or older retail marijuana and retail marijuana products at, in the case of pharmaceutical processors, the pharmaceutical processor and cannabis dispensing facilities for which the pharmaceutical processor holds a permit pursuant to § 54.1-3442.6 of the Code of Virginia or, in the case of industrial hemp processors, at the industrial hemp processing facility for which the industrial hemp processor is registered with the Commissioner of Agriculture and Consumer Services pursuant to Chapter 41.1 (§ 3.2-4112 et seq.) of Title 3.2 of the Code of Virginia and any additional retail locations approved by the Board of Directors of the Virginia Cannabis Control Authority.

Enactment #13 - 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 552 of the Acts of Assembly of 2021, Special Session I, 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 bill satisfies the reenactment requirement of Chapters 550 and 551 of the Acts of Assembly of 2021, Special Session I.

6. **Budget Amendment Necessary:** Yes, Items 45, 98, 301 and 429. Item 404, as introduced (HB30/SB30) provides \$50,000 (woodrum) for certain criminal penalties. The introduced budget HB30/SB30) provides \$11.9 million the first year and \$21.7 million the second year in general fund support for the CCA.
7. **Fiscal Impact Estimates:** Preliminary (see Item #8)
8. **Fiscal Implications:** The substitute bill impacts several state agencies:

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

The bill provides for resentencing hearings for certain marijuana-related convictions. However, because the number of resentencing hearings that may be held is not known, the impact this bill may have on courts cannot be determined at this time. In addition, depending on the number of petitioners who are deemed indigent, the bill could have a material fiscal impact on the Criminal Fund. Since the number of indigent petitioners is unknown, the fiscal impact on the Criminal Fund cannot be determined.

**Virginia Department of Agriculture and Consumer Services (VDACS)**

In order to administer the requirements pertaining to the food safety oversight of edible marijuana products, VDACS indicates the agency will need 7 FTEs and \$710,000 general fund annually to support these positions.

### **Cannabis Control Authority (CCA)**

The bill requires the CCA to promulgate regulations to implement the bill provisions by January 1, 2023. According to the CCA, the Authority will likely accelerate the hiring of staff and use of outside vendors to be able to draft “transitional” rules for early pharmaceutical participation in the retail market while at the same time drafting general rules to create the overall regulatory and licensing structure. The CCA anticipates retail sales to existing cannabis providers to begin on or shortly after January 1, 2023. Assuming all four of the existing pharmaceutical processors enter the retail market on or after January 1, 2023, this will provide at least \$24 million (one-time) in fees with tax proceeds from retail sales. The bill also requires industrial hemp processors to pay a one-time fee of \$500,000. Enactment clause #6 caps the number of industrial hemp processors at ten so up to \$5 million in one-time fees could be collected from industrial hemp processors. The one-time fees collected by the CCA are to be allocated to the Virginia Cannabis Equity Loan Fund or the Virginia Cannabis Equity Reinvestment Fund.

### **Virginia State Police (VSP)**

VSP reports that fingerprint-based criminal background checks may be required for each cannabis retail license applicant. Based on the JLARC report, VSP estimates approximately 1,550 licenses will be issued for marijuana establishments. VSP anticipates 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 CARE section processes the criminal history record results and forwards the information to the requesting agency. One fingerprint technician and one program support technician can process up to 10,000 fingerprint cards per year. According to VSP, its Civil and Applicant Records Exchange (CARE) section does not have the capacity to take on the additional workload of this bill without additional resources. VSP indicates the agency would need one Fingerprint Technician Trainee and one Program Support Technician. The general fund cost for these positions, including IT hardware, is \$151,316 the first year and \$150,414 the second year.

In addition, the bill also requires that anyone convicted prior to July 1, 2021 of certain felony offenses related to marijuana that was sentenced to jail or to the Department of Corrections or placed on community supervision and remains incarcerated in a state or local correctional facility or secure facility are to have new sentencing hearings conducted no later than July 1, 2023. If a sentencing modification is granted, the clerk of the court is to forward the new sentencing order to the Department to be recorded on the criminal history record. The bill will likely require VSP to enter a number of sentence modifications into the agency’s Computerized Criminal History (CCH) system. However, the number of sentencing modifications that would result from this bill cannot be determined. If the volume warrants VSP to bring on additional contract personnel, the estimated cost would be \$25 per hour.



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

The bill is not expected to have a material fiscal impact on the agency's resources.

**Virginia Parole Board (VPB)**

The bill is not expected to have a material fiscal impact on the agency's resources.

**Department of Health Professions (DHP)**

According to the DHP, the bill will likely have a fiscal impact on the Board of Pharmacy. As shown in the table below, DHP indicates additional personnel will be needed to comply with the requirements of the bill:

<b>Fiscal Impact (Quantity)</b>	<b>Description</b>	<b>Cost</b>
Inspector/Investigator (1)	For the regulation of industrial hemp processors	\$75,000
Product Registration Analyst (2)	Review and approve product registrations from retail hemp processors and pharmaceutical processors	\$150,000
Cost of OAG services	For appeals, regulatory changes and legal advice	\$64,329
<b>Estimated Total Fiscal Impact</b>		<b>\$289,329</b>

**Department of Motor Vehicles (DMV)**

DMV has four major caches of records that may contain information that needs to be sealed pursuant to the provisions of this bill, including electronically maintained driving records (CSS), an electronically maintained document database (OnBase), and the Traffic Record Electronic Database System (TREDS). According to DMV, the bill would require the agency to automate the sealing process and to use an alternative method to "seal" electronically maintained records that reduces the costs associated with expunging those records and with having to use a manual/paper sealing process.

Under the provisions of § 19.2-392.6(E) of this bill, affected electronic customer records contained in CSS will be updated immediately; however, DMV would segment and secure in a separate location (with restricted access) the OnBase records that could contain convictions that require sealing. (These are paper records that have been scanned into DMV's document imaging system.) DMV would then remove the appropriate convictions on a customer's digitized records at the time the agency receives a request for release of that customer's records. DMV anticipates that this would result in DMV sealing an estimated 110,000 records upfront and an estimated 5,100 records per year thereafter.

**Fiscal Impact of 110,000 upfront records:**

Cost per sealing for automated sealing process and related activities: \$9 per record

Fiscal impact of 5,100 records per year  
Cost per sealing: \$38 per record

According to DMV, the costs associated with the on-going sealing costs is greater because sealing those records requires a manual process that takes more time to complete. There are more costs associated with technology and maintenance factored in as well. Additionally, DMV calculates that, at roughly 50 minutes per document to complete the sealing process, sealing the approximately 5,100 records will take roughly 4,400 hours to complete-- or the equivalent to about three full time employees.

Lastly, DMV reports the agency cannot absorb these costs and staff positions and would need additional appropriation. However, the necessary appropriation wouldn't be needed until FY 2025 when the portions of the bill impacting DMV become effective.

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

According to the OAG, the bill is not expected to create a material fiscal impact on agency resources.

**Department of Corrections (DOC)**

DOC is still assessing the fiscal impact of this bill. If the agency reports a material fiscal impact as a result of this bill, the fiscal impact statement will be updated to reflect the information received.

- 9. Specific Agency or Political Subdivisions Affected:** Courts, Cannabis Control Authority, Department of Agriculture and Consumer Services, Virginia State Police, Department of Motor Vehicles, Department of Corrections, Department of Criminal Justice Services, Virginia Parole Board and Department of Health Professions.

- 10. Technical Amendment Necessary:** No

- 11. Other Comments:** According to DHP, there is no statutory authority in the bill for the agency to promulgate regulations for or collect fees from industrial hemp producers. There is an allowance to "assess and collect fees" but the Board of Pharmacy cannot assess fees that are not established in regulation.