

Department of Planning and Budget
2024 Session Fiscal Impact Statement
Revised 3/14/2024

1. Bill Number: HB698ER

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

2. Patron: Krizek

3. Committee: Passed both Houses

4. Title: Cannabis control; retail market; penalties.

5. Summary: Establishes a framework for the creation of a retail marijuana market in the Commonwealth, which would be administered by the Virginia Cannabis Control Authority (CCA). The bill allows the Authority to begin accepting license applications on September 1, 2024, but provides that no marijuana sales may occur prior to May 1, 2025.

6. Budget Amendment Necessary: Yes. Item 92 (VDACS), Item 260 (TAX), Item 382 (CCA), Item 390 (DOC) and Item 415 (VSP); See description in Item 8 below.

7. Fiscal Impact Estimates: Final, see Item 8 below.

8. Fiscal Implications: The proposed bill has varying levels of impact on several state agencies:

Cannabis Control Authority (CCA)

In order to meet the provisions of this bill, the CCA estimates that it will need up to 72 additional (nongeneral fund supported and potential one-time general fund supported) staff in FY 2025 and one additional staff member to begin in FY 2026. The necessary staff categories include Education, Legal and Policy, Investigation, Licensing, Compliance, Information Technology, Human Resources, and Finance. The CCA also reports that it will need to use resources for IT services and equipment, computer software development and maintenance, motor vehicle and law enforcement equipment, and travel within the Commonwealth of Virginia. Under the bill, the agency estimates approximately 620 adult use permits in Virginia.

The CCA's estimated costs are summarized below.

Description	FY 2025 Cost	FY 2026 Cost
Computer Software Development and Maintenance Services (licensing and product registration software) (One-Time and Recurring)	\$850,000	\$250,000

Motor Vehicle and Law Enforcement Equipment and Supplies (One-Time and Recurring)	\$437,898	\$26,768
IT Services, Software, Travel, Training, and Incidentals for FTE (Recurring)	\$991,471	\$1,004,869
IT Equipment and Furniture for FTE (One-Time)	\$433,640	\$5,860
Estimated Personnel Costs (72 FTE in FY 2025 and 73 in FY 2026)	\$5,726,529*	\$7,716,791
Estimated Total Fiscal Impact	\$8,439,538	\$9,004,288
*FY 2025 estimated personnel costs are prorated for nine months.		

The CCA estimates that application fees will generate \$3,795,750 in nongeneral fund revenue in FY 2025, which would support operational costs to include 17 full time equivalent (FTE) positions. Because the bill requires the CCA to deposit, from July 1, 2024, to July 1, 2025, 75 percent of marijuana license fees into the Cannabis Equity Business Loan Fund, the CCA reports that it may need one-time general fund to support up to 55 positions that might be needed as outlined above. However, it is unclear how quickly the CCA is able to hire these positions in Fiscal year 2025 or if all of these positions are needed immediately. An alternative might be to provide a treasury loan or a line of credit to CCA to cover the costs of these positions, assuming that future revenues could repay these loans. According to the CCA, these positions would transition to nongeneral fund support in FY 2026 and beyond. The CCA reports personnel costs for 55 FTEs are estimated to be \$4,643,788.

Item 397 in Chapter 1 (present Appropriation Act) provides the CCA with a general fund base budget of \$5.3 million and 49 positions. Chapter 1 also provides one-time funding of \$2.5 million general fund originally appropriated under Item 479 U., Chapter 552, 2021 Acts of Assembly, Special Session I, to cover one-time expenses. The Introduced Budget (HB30/SB30) adjusts CCAs authority by \$1 million each year. According to the agency, once the retail market is fully implemented, the currently general funded positions would be supported with nongeneral fund appropriation.

Department of Taxation (TAX)

The bill would impose an eight percent tax, in addition to a 1.125 percent sales tax, that would apply on any retail marijuana, retail marijuana products, marijuana paraphernalia sold by a retail store, as well as non-retail marijuana and non-retail marijuana products. The bill would further provide that any locality may, by ordinance, impose an additional tax on these retail and non-retail products at a rate not to exceed 2.5 percent that would apply in addition to local food and beverage and meals taxes. The taxes imposed would be collected by the seller and remitted to the CCA. Any local tax revenue would be returned to the locality in which it was collected.

The bill would also allow taxpayers to claim income tax deductions on their Virginia returns for ordinary and necessary expenditures made in connection with carrying on a trade or business licensed under the Cannabis Control Act.

If enacted during the regular session of the 2024 General Assembly, this bill would become effective July 1, 2024. The CCA would be authorized to begin accepting license applications, including those from pharmaceutical processors, September 1, 2024. Several provisions of the bill related to the recreational marijuana market would become effective May 1, 2025.

The provision of this bill authorizing income tax deductions would be effective for taxable years beginning on and after January 1, 2024.

Administrative Costs

TAX would incur costs of \$739,430 in Fiscal Year 2025 to implement the necessary changes to the Retail Sales and Use Tax return. This involves updating the agency's forms and systems to apply a different sales tax rate and different tax distribution to cannabis sales, as required under this bill.

Revenue Impact

The provision of this bill imposing a marijuana tax would have an unknown positive impact on state revenues. It is anticipated that revenues from this bill would be generated beginning as early as Fiscal Year 2025 and that they would grow annually.

In November 2020, the Joint Legislative Audit and Review Commission (JLARC) published a report entitled "Key Considerations for Marijuana Legalization," which provided a high and a low estimate for sales. Below are JLARC's estimate for sales in years one through five of implementation.

Projected Marijuana Sales in Virginia (in millions)
Source: JLARC Analysis of MPG Sales Estimates

	Year 1	Year 2	Year 3	Year 4	Year 5
Higher end - expected legal sales	\$206.00	\$420.00	\$646.00	\$844.00	\$1,016.00
Lower end - expected legal sales	\$123.60	\$252.00	\$387.60	\$506.40	\$609.60

The higher end projections reflect optimistic estimates of illegal market conversion, relative equilibrium between supply and demand, and that neither surrounding states nor the federal government legalize recreational marijuana. The lower end projections reflect less optimistic estimates of illegal market conversion, possible periods of disequilibrium between supply and demand, and the possibility of West Virginia, Tennessee, or North Carolina, or the federal government, legalizing recreational marijuana sales.

Using the mid-range point of JLARC's estimates as a base, it is estimated that this bill could generate total state revenues of \$7.3 million in Fiscal Year 2025, \$25.66 million in Fiscal Year 2026, \$42.32 million in Fiscal Year 2027, \$60.43 million in Fiscal Year 2028, \$75.67 million in Fiscal Year 2029, and \$87.84 million in Fiscal Year 2030. Such revenues include additional revenues estimated to be generated from the eight percent state excise tax and 1.125 percent sales tax that would be imposed by this bill. These estimates exclude the impact of any local 2.5 percent excise tax that could be imposed under this bill.

The detailed estimated revenue impact of the bill is as follows:

Fiscal Year Revenue Impacts from Retail Marijuana Market

(Millions \$)

	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
Marijuana Tax (8%)	\$6.41	\$22.52	\$37.15	\$53.04	\$66.41	\$77.10
Sales and Use Tax (1.115%) ¹	\$0.89	\$3.14	\$5.18	\$7.39	\$9.26	\$10.75
<i>Local Option (2.5%)</i>	<i>Unknown up to \$2.00</i>	<i>Unknown up to \$7.04</i>	<i>Unknown up to \$11.61</i>	<i>Unknown up to \$16.57</i>	<i>Unknown up to \$20.75</i>	<i>Unknown up to \$24.09</i>
<i>Local Taxes (Food and Beverage)</i>	<i>Unknown Gain</i>	<i>Unknown Gain</i>	<i>Unknown Gain</i>	<i>Unknown Gain</i>	<i>Unknown Gain</i>	<i>Unknown Gain</i>
Marijuana Tax (8%)²	\$6.41	\$22.52	\$37.15	\$53.04	\$66.41	\$77.10
Pre-K Programs (10%)	\$2.56	\$9.01	\$3.71	\$5.30	\$6.64	\$7.71
Cannabis Equity Reinvestment Fund (60%)	\$1.92	\$6.76	\$22.29	\$31.82	\$39.85	\$46.26
Substance Use Disorder (25%)	\$1.60	\$5.63	\$9.29	\$13.26	\$16.60	\$19.27
Public Health Program (5%)	\$0.32	\$1.13	\$1.86	\$2.65	\$3.32	\$3.85
SUT Distributions (1.115%)	\$0.89	\$3.14	\$5.18	\$7.39	\$9.26	\$10.75
GF - Restricted (1%)	\$0.80	\$2.82	\$4.64	\$6.63	\$8.30	\$9.64
GF - Transfer (0.115%)	\$0.09	\$0.32	\$0.53	\$0.76	\$0.95	\$1.11

¹ Includes 1% education funding based on school age population, 0.125% education transfer based on school age population, less the 0.01% dealer discount.

² Distribution of funds will be 40% for Pre-K, 30% for Cannabis Equity Reinvestment, 25% for Substance Use Disorder, 5% for Public Health Programs until Fiscal Year 2027 when the distribution changes to 10%, 60%, 25%, and 5%, as shown in the left-most column above.

* Estimates based upon JLARC's estimates in its 2020 report, "Key Considerations for Marijuana Legislation."

** Estimates assume retail sales beginning May 1, 2025, and eligible pharmaceutical sales beginning September 1, 2024. All sales would be taxed at the 8% marijuana tax rate, in addition to the local sales tax. Localities would have the option to impose a 2.5% excise tax in addition local sales tax and local food and beverage tax.

***Pharmaceutical Processors Tax estimates generated by adjusting JLARC's sales estimates by applying the annual ratio of medical to recreational sales in Colorado, Oregon, and Illinois to Virginia's estimated recreation sales

According to the Department of Taxation, the provision of this bill allowing deductions for certain licensed marijuana businesses would have an unknown negative General Fund revenue impact beginning in Fiscal Year 2025. It is unknown to what extent marijuana businesses operating in Virginia would have business expenses that would otherwise be subject to the federal prohibition on claiming such expenses on income tax returns.

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

According to the Office of the Executive Secretary of the Supreme Court, the proposed legislation is not expected to have a fiscal impact on agency operations.

Virginia Department of State Police (VSP)

According to the Virginia State Police, fingerprint-based criminal background checks may be required for each cannabis license applicant. Currently, the Civil and Applicant Records Exchange (CARE) of the Virginia Central Criminal Record Exchange (CCRE) is tasked with processing criminal history record background checks. It is anticipated that fingerprint submissions will be inked cards instead of electronic submissions. Within the fingerprint-based criminal record check process, Fingerprint Technicians are used to identify the fingerprints to match the information to the appropriate criminal history record. One Fingerprint Technician and one Program Support Technician can process up to 10,000 fingerprint cards per year. The agency estimates that it would require one Fingerprint Technician Trainee and one Program Support Technician to process the additional background checks for a total estimated general fund cost of \$188,287 in the first year and \$177,373 in the second year (including benefits, IT hardware, and furniture).

Department of Agriculture and Consumer Services (VDACS)

VDACS estimates it will require current staffing and resources to maintain the Office of Hemp Enforcement as well as three additional Food Safety Specialists with annual salary, benefits, and operating expenses totaling \$91,081 general fund per position to keep up with increasing inspections of new edible marijuana manufacturers, for a total annual general fund cost of \$273,243.

Department of Education

According to the Department of Education, the agency can absorb any work associated with reviewing and distributing materials on underage marijuana use provided by the CCA.

Under § 4.1-1003. Marijuana tax, per paragraph A and existing § 4.1-614, part of the 8 percent tax would go to pre-K programs for at-risk three- and four-year-olds.

Institutions of Higher Education

The proposed legislation is not expected to have a fiscal impact on public institutions of higher education.

Office of the Attorney General

According to the Office of the Attorney General, the proposed legislation is not expected to have a fiscal impact on agency operations.

Department of Health Professions

According to the Department of Health Professions, the proposed legislation is not expected to have a fiscal impact on agency operations.

Criminal Impact

According to the Virginia Criminal Sentencing Commission (VCSC), the number of individuals who may be convicted of the new misdemeanors and felonies defined in the proposal, and the sentences these individuals may receive, is not known. By creating a regulatory and licensing structure, the proposal may result in fewer convictions related to the unlawful distribution of marijuana. Whether or not, or the extent to which, this will occur is not known.

VCSC reports that 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. The proposal also specifies that monthly tax returns filed by licensees must be made under oath, which may have felony implications for making a materially false statement on the return. Furthermore, the proposal expands the felony for operating an aircraft while under the influence to include the influence of marijuana. The net effect on the number of convicted individuals and the impact on sentencing patterns cannot be estimated; therefore, the net impact on the future state-responsible (prison) bed space needs of the Commonwealth cannot be quantified. Similarly, the net impact on local-responsible (jail) bed space needs cannot be estimated.

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 \$5.00 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 2023), the estimated total state support for local jails averaged \$45.76 per inmate, per day in FY 2022.

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 1, 2023 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

The total general fund cost for state agencies other than CCA are \$1,250,960 in Fiscal Year 2025 and \$450,616 in Fiscal Year 2026.

- 9. Specific Agency or Political Subdivisions Affected:** Courts, Department of Education, Department of Agriculture and Consumer Services, Virginia State Police, Department of Corrections, Office of the Attorney General, Department of Health Professions, Board of Pharmacy, Department of Corrections, local and regional jails, state and local law enforcement agencies, Commonwealth's Attorneys, and Office of the Public Defender.

10. Technical Amendment Necessary: No.

11. Other Comments: This fiscal impact statement has been revised to adjust the revenue table included in Item 8 based on new information from the Department of Taxation (TAX). TAX reports that while the overall revenue impact of this bill did not change between the conference draft and enrollment, it was determined that the distribution formula proposed by this bill would not come into effect until July 1, 2026. As a result, the amounts to be distributed to the Cannabis Equity Reinvestment Fund and pre-kindergarten programs for at-risk three-year-olds and four-year-olds have been adjusted for FY 2025 and FY 2026. The overall revenue impact of the bill has not changed.