

## Department of Planning and Budget 2022 Fiscal Impact Statement

**1. Bill Number:** HB430

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

**2. Patron:**    Herring

**3. Committee:** Committee Referral Pending

**4. Title:**    Cannabis retail market

**5. Summary:** The proposed bill establishes a framework for the creation of a retail marijuana market in the Commonwealth. The bill creates a regulatory and licensing structure for such retail market and for the cultivation, manufacture, and wholesale of marijuana and marijuana products to be administered by the Virginia Cannabis Control Authority (CCA). The bill also relocates and modifies numerous criminal provisions regarding marijuana offenses. The bill has staggered effective dates. The bill satisfies the reenactment requirement of Chapters 550 and 551 of the Acts of Assembly of 2021, Special Session I, but makes numerous modifications to the provisions of the 2021 legislation related to criminal penalties, expungement, regulation of certain hemp products, and diversity, equity, and inclusion.

The bill amends § 4.1-600 to define the terms "Edible hemp product", "Hemp product", "Hemp product intended for smoking", "Industrial hemp", "Industrial hemp extract" and "Regulated hemp product". The bill modifies the definition of "Marijuana" to exclude industrial hemp that is possessed by a person who holds a hemp producer license issued by the U.S. Department of Agriculture pursuant to 7 C.F.R. Part 990; a hemp product other than a regulated hemp product, or a regulated hemp product that does not exceed the maximum tetrahydrocannabinol concentration established pursuant to § 4.1-606 and that is derived from industrial hemp that is grown, dealt, or processed in compliance with state or federal law. The bill amends § 4.1-601 to add "regulated hemp products" to list of products that are to be regulated by the CCA and amends § 4.1-603 to add the Director of Diversity, Equity, and Inclusion as an ex officio member of the Cannabis Public Health Advisory Council.

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. The tax shall be in addition to any tax imposed under the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.) or any other provision of federal, state, or local law. (§ 4.1-1003). The bill also provides the option for a local tax where any locality can, by ordinance, levy a three percent tax on any sale (§ 4.1-1004).

The bill adds § 4.1-1400 through § 4.1-1407 which governs the cannabis and regulated hemp product control, testing and advertising.

The bill removes “marijuana” from the list of criminal offenses under § 18.2-251.

The bill contains several enactment clauses:

Enactment #2 – Repeals §§ 3.2-5145.1 through 3.2-5145.5 of Chapter 51 of Title 3.2 and §§ 4.1-1101.1, 4.1-1105.1, 18.2-248.1, and 18.2-251.1

Enactment #3 – Repeals the sixteenth enactment of Chapter 550 and the sixteenth enactment of Chapter 551 of the Acts of Assembly of 2021, Special Session I

Enactment #4 - The provisions of this act shall become effective on January 1, 2024 (except for the fifth, sixth, seventh, eighth, and ninth enactments)

Enactment #5 - The provisions of §§ 2.2-2499.8, 4.1-603, 4.1-629, as created by this act, 4.1-1100, 4.1-1101, 4.1-1105.1, as amended in the first enactment, and 4.1-1121 of the Code of Virginia and the repeal of the sixteenth enactment of Chapter 550 and the sixteenth enactment of Chapter 551 of the Acts of Assembly of 2021, Special Session I, shall become effective in due course

Enactment #6 - Subject to the provisions of the seventh enactment of this act, the provisions of §§ 4.1-630 and 4.1-631 and Chapter 7 (§ 4.1-700 et seq.), Chapter 8 (§ 4.1-800 et seq.), Chapter 9 (§ 4.1-900 et seq.), Chapter 10 (§ 4.1-1000 et seq.), Chapter 12 (§ 4.1-1200 et seq.), and Chapter 14 (§ 4.1-1400 et seq.) of Title 4.1 of the Code of Virginia, as created by this act, shall become effective on July 1, 2023.

Enactment #7 - The Virginia Cannabis Control Authority (the Authority) may start accepting applications for licenses pursuant to the provision of § 4.1-1000 of the Code of Virginia, as created by this act, on July 1, 2023, and shall, from July 1, 2023, until January 1, 2024, give preference to qualified social equity applicants, as determined by regulations promulgated by the Board of Directors of the Authority in accordance with this act.

Notwithstanding the fourth enactment of this act, any applicant issued a license by the Authority may operate in accordance with the provisions of this act prior to January 1, 2024; however, prior to January 1, 2024, (i) no retail marijuana store licensee may sell retail marijuana, retail marijuana products, immature marijuana plants, or marijuana seeds and (ii) no marijuana cultivation facility licensee may sell immature marijuana plants or marijuana seeds to a consumer.

Notwithstanding any other provision of law, on or after July 1, 2023, and prior to January 1, 2024, no marijuana cultivation facility licensee, marijuana manufacturing facility licensee, marijuana wholesaler licensee, retail marijuana store licensee, or marijuana testing facility licensee or agent or employee thereof shall be subject to arrest or prosecution for a violation of Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1 of the Code of Virginia, § 18.2-248, 18.2-

248.01, 18.2-255, 18.2-255.1, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-265.3, or 18.2-308.4 of the Code of Virginia, as amended by this act, or § 18.2-248.1 of the Code of Virginia, as repealed by this act, involving marijuana if such violation is related to acts committed within the scope of the licensure or employment and in accordance with the provisions of the Cannabis Control Act (§ 4.1-600 et seq. of the Code of Virginia).

From July 1, 2023, to July 1, 2028, the Authority shall (a) reserve a license slot for a qualified social equity applicant for very license that was initially granted to a social equity applicant and was subsequently surrendered and (b) reserve license slots for all pharmaceutical processors that have been issued a permit by the Board of Pharmacy pursuant to Article 4.2 (§ 54.1-3442.5 et seq. of the Code of Virginia) of the Drug Control Act and issue a cultivation, manufacturing, wholesale, and retail license to any such pharmaceutical processor that meets the applicable licensing requirements.

The Authority shall ensure that geographic dispersion is achieved regarding the issuance of retail marijuana store licenses and shall reassess the issuance of retail marijuana store licenses at the following intervals to ensure that geographic dispersion is maintained: after issuance of 100 licenses, 200 licenses, and 300 licenses. The provisions of this enactment shall become effective in due course.

Enactment #8 – Provides that the repeal of Article 5 (§§ 3.2-5145.1 through 3.2-5145.5) of Chapter 51 of Title 3.2 of the Code of Virginia shall become effective on the earlier of (i) the promulgation by the Board of Directors of the Virginia Cannabis Control Authority of final regulations governing regulated hemp products pursuant to § 4.1-606 of the Code of Virginia, as amended by this act, or (ii) July 1, 2023.

Enactment #9 - The provisions of §§ 19.2-392.2:3 and 19.2-392.2:4 of the Code of Virginia, as created by this act, shall become effective on the earlier of (i) the first day of the fourth month following notification to the Chairman of the Virginia Code Commission and the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice by the Superintendent of State Police that the Executive Secretary of the Supreme Court of Virginia, the Department of State Police, and any circuit court clerk who maintains a case management system that interfaces with the Department of State Police under subsection B of § 17.1-502 of the Code of Virginia have automated systems to exchange information or (ii) July 1, 2025. The Executive Secretary of the Supreme Court of Virginia, the Department of State Police, and any circuit court clerk who maintains a case management system that interfaces with the Department of State Police under subsection B of § 17.1-502 of the Code of Virginia, shall automate systems to exchange information as required by § 19.2-392.2:3 of the Code of Virginia, as created by this act, no later than July 1, 2025.

Enactment #10 - 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.

6. **Budget Amendment Necessary:** Yes, Items 45, 46, 98, 429
7. **Fiscal Impact Estimates:** Preliminary (see Item #8)
8. **Fiscal Implications:** The proposed bill has varying levels of impact on several state agencies:

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

### **Petition Expungements**

The bill provides that a person convicted or adjudicated delinquent of a felony violation of former § 18.2-248.1 or any violation of § 18.2-265.3(A) as it relates to marijuana, or the charge under either section was deferred and dismissed, may petition the court for expungement of the court and police records. According to OES, this provision would increase the workload on general district court and juvenile and domestic relations district court clerks who would be tasked with locating the physical case file for each expunged case, sealing its contents, indexing the case and deleting the electronic record for each case in the case management system.

It is estimated that the tasks required of a district court deputy clerk to expunge a case would consume 10 minutes. Available information indicates there are 147 adjudications of felony delinquency under §18.2-248.1 in juvenile and domestic relations district courts (JDR). OES records indicate that there were 10,734 guilty verdicts for violations of § 18.2-248.1 in circuit court between 2010 and 2019. Assuming that 50 percent of the 10,881 convictions would be expunged in accordance with the bill's provisions, and that the vast majority of the circuit court convictions had a preliminary hearing within general district court, this would increase the statewide workload of district clerks in a manner equivalent to that performed by 0.7 of a full-time employee of a clerk's office. The number of cases deferred and dismissed for felony violations of § 18.2-248.1 within the timeframe in JDR and circuit court is minimal and is not expected to have a material impact on the district court workload. The number of cases brought for violations of subsection A of § 18.2-265.3 as it relates to marijuana cannot be determined from available information.

### **Automatic Expungements**

The bill also provides that police and court records of a person charged with a misdemeanor violation of § 18.2-248.1 or a violation of former § 18.2-250.1 must be expunged. The Department of State Police (VSP) is responsible for identifying such cases and electronically submitting a list to the Office of the Executive Secretary of the Supreme Court (OES) and any circuit court clerk who maintains a case management system that interfaces with VSP. OES must then provide an electronic list of all offenses that meet the criteria for automatic expungement to the circuit court clerks that utilize the case management system it maintains.

The clerk receiving the list would then be required to prepare an order to be entered by the chief judge directing that the offenses that meet the criteria be automatically expunged. The circuit court clerk must provide an electronic copy of any order entered by the chief judge regarding automatic expungement to VSP. Upon receipt of such order, VSP would notify any agency or individual known to maintain or to have obtained the records to be expunged. VSP and any such agency or individual must expunge such records under the process set forth by VSP pursuant to rules and regulations adopted pursuant to § 9.1-134.

The bill contemplates a manual process upon receipt of the order from the circuit court. As noted under petition expungements, OES estimates that the tasks required of a district court deputy clerk to expunge a case would consume 10 minutes. Electronic case management systems for district courts include 1,203 misdemeanor cases brought under § 18.2-248.1 in juvenile and domestic relations district court (JDR) and 6,730 in general district court (GDC). Also, OES records indicate there are 17,835 cases in JDR for violations of § 18.2-250.1 and 239,449 in GDC. If the cases for misdemeanor violations of § 18.2-248.1 and for violations of § 18.2-250.1 were to be expunged, this would increase the statewide workload of clerks in a manner equivalent to that performed by 36.5 full time employees of a clerk's office.

The total increase in workload to expunge cases, both by petition and automatically initiated, is 36.5 employees of a district court clerk's office. This is an annual increase in work equal to \$2,413,886 in general fund resources.

#### Department of Agriculture and Consumer Services (VDACS)

According to VDACS, there would be no fiscal impact related to labeling, packaging and advertising hemp products intended for human consumption, hemp products intended for smoking or regulating hemp testing laboratories. However, additional resources will be needed to adopt enforcement regulations and conduct inspections in the location where edible marijuana products and edible hemp products are manufactured. VDACS estimates 7 positions and \$710,000 would be needed to comply with the requirements of this bill.

#### Virginia State Police (VSP)

Based on the November 2020 JLARC report "*Key considerations for the legalization of marijuana*", VSP estimates that approximately 1,550 licenses would be issued for marijuana establishments. The required criminal history record background check for these licenses would be processed by the Non-Criminal Justice (NCJ) section of the VSP's Central Criminal Records Exchange (CCRE). It is anticipated 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 NCJ section processes the criminal history record results and forwards the information to the requesting agency. VSP reports that the additional workload would require additional Fingerprint Technician and Program Support Technician resources. The annual salary and benefit cost for a Fingerprint Technician Trainee is \$67,869 and \$79,465 for a Program Support Technician.

In addition, VSP reports that the proposed bill would require the automatic expungement of previous marijuana charges of §18.2-248.1 (Penalties for sale, gift, distribution or possession with intent to sell, give or distribute marijuana) and §18.2-250.1. Also, the bill would allow for a petition based expungement of felony convictions of §18.2-248.1, §18.2-265.3 subsection A, and misdemeanor convictions of §18.2-265.3 subsection A. According to VSP, the expungement of criminal history information is a time consuming, manual process. Currently, the VSP expungement section is comprised of 8 expungement employees and 1 supervisor, with each employee capable of competing 500 expungements within a year. VSP has determined 356,084 offenses would be eligible for the automatic expungement and 26,040 would be eligible for the petition based expungement.

The legislation is silent on how long the agency has to complete the automatic expungements. However, if VSP were to complete the 356,084 automatic expungements in one year the agency reports needing 712 contract personnel at a one-time general fund cost of \$47,996,000.

If VSP completed the automatic expungements in two years, the agency estimates that 449 Contractors (392 front-line personnel, 49 first-line supervisors, 7 managers, and one senior manager) would be needed each year. The general fund cost breakdowns if the automatic expungement are to be completed in two years are as follows:

Required staff (quantity)	First Year Costs	Second Year Costs	Total Costs
Contract front-line personnel (392)	\$20,384,000	\$20,384,000	\$40,768,000
Contract front-line supervisors (49)	\$3,057,600	\$3,057,600	\$6,115,200
Contract managers (7)	\$509,600	\$509,600	\$1,019,200
Contract senior manager (1)	\$83,200	\$83,200	\$166,400
Totals	\$24,034,400	\$24,034,400	\$48,068,800

In addition, VSP indicates that 26,040 offenses would be eligible for the petition based expungement. It is unknown as to how many individuals would take advantage of the petition based expungement. Assuming 10 percent (2,604) of eligible offenses, VSP estimates the agency would need approximately 7 FTE's (\$589,703 on-going) to handle the petition based expungements (2,604/500).

Finally, VSP reports the agency has space available to house 2 positions, the Program Support Technician and the Fingerprint Technician Trainee. Office space would have to be identified for all other necessary personnel. VSP estimates a first year general fund cost (office space, furniture and IT hardware) of \$4,756,414 and a second year general fund cost of \$2,333,240.

Cannabis Control Authority (CCA)

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

**9. Specific Agency or Political Subdivisions Affected:** Courts, Department of Agriculture and Consumer Services, Virginia State Police, Virginia Cannabis Control Authority

**10. Technical Amendment Necessary:** No

**11. Other Comments:** No