

Department of Planning and Budget 2022 Fiscal Impact Statement

1. Bill Number: SB591S3

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

2. Patron: Hanger

3. Committee: Senate Committee on the Judiciary

4. Title: Cannabis shape prohibitions

5. Summary: The substitute bill amends the definition of “marijuana” to include any substance containing a total tetrahydrocannabinol concentration that exceeds 0.3 percent or more than 0.25 milligram of tetrahydrocannabinol per serving or more than one milligram per package, including a hemp product, as defined in § 3.2-4112, or an industrial hemp extract, as defined in § 3.2-5145.1.

The bill clarifies that “marijuana” does not include i) industrial hemp, as defined in § 3.2-4112, 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 or his agent; ii) an industrial hemp extract, as defined in § 3.2-5145.1, containing a tetrahydrocannabinol concentration of no greater than 0.3 percent that is derived from industrial hemp, as defined in § 3.2-4112, grown, dealt, or processed in compliance with state or federal law; or iii) any drug product containing tetrahydrocannabinol that is approved for marketing by the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) by the Board of Pharmacy pursuant to § 54.1-3443.

The bill requires the Cannabis Control Authority Board to promulgate regulations that prohibit the production and sale of retail marijuana and retail marijuana products that depict or are in the shape of a human, animal, vehicle, or fruit.

The bill amends § 9.1-1101 to require the Department of Forensic Science (DFS) to determine 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, Chapter 7 (§ 18.2-247 et seq.) of Title 18.2, and §§ 54.1-3401 and 54.1-3446. The testing methodology must use post-decarboxylation testing or another equivalent method and shall consider the potential conversion of tetrahydrocannabinol acid (THC-A) into THC. The test result shall include the total available THC derived from the sum of the THC and THC-A content.

The bill contains enactment clauses.

6. **Budget Amendment Necessary:** Yes, Item 404, as introduced (HB30/SB30) provides \$50,000 (woodrum) for certain criminal penalties.
7. **Fiscal Impact Estimates:** Preliminary (see Item #8)
8. **Fiscal Implications:** According to the Cannabis Control Authority (CCA), it is anticipated that the additional regulations that would result from these additional products can be accommodated with existing regulatory resources. The introduced budget (HB30/SB30) provided additional start-up general fund support for the operation of the CCA.

According to the Office of the Executive Secretary of the Supreme Court, Department of Agriculture and Consumer Services and Department of Forensic Science, the substitute bill is not expected to create a material fiscal impact on agency resources.

The substitute bill expands existing felony provisions to cover additional variations of THC, which could result in an increase in the state-responsible (prison) bed space needs of the Commonwealth. Since the number of individuals who may be convicted as a result of this bill cannot be determined with available data, the impact on prison beds cannot be quantified.

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 552, 2021 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

The provisions of this bill may also increase the bed space needs in jails. According to the VCSC, not enough information is 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. It also funds a 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 2021), the estimated total state support for local jails averaged \$37.58 per inmate, per day in FY 2020. The Commonwealth pays localities \$12.00 a day for any state-responsible prisoner held in a local jail.

9. **Specific Agency or Political Subdivisions Affected:** Department of Forensic Science, Courts, Department of Agriculture and Consumer Services, Cannabis Control Authority, Department of Corrections, local and regional jails
10. **Technical Amendment Necessary:** No
11. **Other Comments:** None