

## Department of Planning and Budget

### 2022 Fiscal Impact Statement

**1. Bill Number:** SB313S1

**House of Origin**    ☐ Introduced    ☒ Substitute    ☐ Engrossed

**Second House**    ☐ In Committee    ☐ Substitute    ☐ Enrolled

**2. Patron:** Ebbin

**3. Committee:** Senate Finance and Appropriations

**4. Title:** Retail sale of cannabis products by certain pharmaceutical processors

**5. Summary:** The substitute bill allows certain pharmaceutical processors to sell, under the oversight of the Board of Directors of the Virginia Cannabis Control Authority (CCA Board), cannabis products at retail to unregistered persons who are 21 years of age or older without the need for a written certification.

The bill directs the CCA Board to adopt and enforce regulations governing such sales that must model certain Board of Pharmacy regulations and comply with other requirements set forth in the bill. The bill requires pharmaceutical processors engaging in such sales to pay a one-time \$6 million fee and collect a 21 percent excise tax, both of which must ultimately be allocated to the Virginia Cannabis Control Authority to provide loans to qualified social equity applicants who are in need of capital for the start-up of a licensed cannabis business.

The bill permits any locality to, by ordinance, levy a three percent tax on the sale of cannabis products pursuant to this act. 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, any food and beverage tax imposed under Article 7.1 (§ 58.1-3833 et seq.) of Chapter 38 of Title 58.1, and any excise tax imposed on meals under § 58.1-3840. 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 is to be construed to prohibit a locality from imposing any tax authorized by law on a person or property regulated under this act. Any locality that enacts an ordinance pursuant to this section must, within 30 days, notify the Virginia Cannabis Control Authority and any pharmaceutical processor in such locality of the ordinance's enactment. The ordinance shall take effect on the first day of the second month following its enactment. Any local tax levied under this section shall be remitted and disbursed to the Virginia Cannabis Control Authority in the same manner as the 21 percent state excise tax and, thereafter, disbursed to the applicable locality.

The bill also requires such pharmaceutical processors to submit and comply with a plan describing how the processor will educate consumers about responsible consumption of cannabis products and incubate independent cannabis retailers or support and educate persons that wish to participate in the cannabis market.

The bill has a delayed effective date of January 1, 2023, and will expire when the Virginia Cannabis Control Authority provides written notice to the Division of Legislative Services that pharmaceutical processors engaging in the sale of cannabis products pursuant to the provisions of the bill are authorized by the Virginia Cannabis Control Authority to apply for

and be granted licenses to cultivate, manufacture, wholesale, and sell at retail to consumers 21 years of age or older retail marijuana and retail marijuana products.

**6. Budget Amendment Necessary:** Indeterminate

**7. Fiscal Impact Estimates:** Indeterminate (see Item #8)

**8. Fiscal Implications:** According to the Department of Taxation (TAX), if the number of pharmaceutical processors that elect to purchase the license provided by this bill is relatively small, TAX could possibly consider the implementation of this bill as routine, without requiring additional resources. TAX would use a manual process to collect and account for the temporary excise tax created by the bill. However, if a larger number of pharmaceutical processors receive such licenses and remit the tax, the Department could incur costs although the precise cost is indeterminate.

The impact of the one-time \$6 million fee established by this bill is unknown and would depend on the number of pharmaceutical processors that requested permits to sell cannabis products under this bill. Information from the Cannabis Control Authority (CCA) indicates there are currently 4 pharmaceutical processors. If all 4 apply for licensure under the provisions of this bill, the revenue impact for the CCA could be \$24 million.

TAX reports that the impact of the 21 percent excise tax established under this bill would depend on sales volume of pharmaceutical processors that receive such permits. Based upon projected marijuana sales in Virginia as determined by JLARC in conjunction with MPG Consulting, it is estimated that this bill could potentially generate excise tax revenues of \$13.8 million in Fiscal Year 2023 and \$30.9 million in Fiscal Year 2024, as well as additional sales tax revenues of approximately \$3 million in Fiscal Year 2023 and \$8.5 million in Fiscal Year 2024. Such estimates are based upon the lower end estimates produced by JLARC, which reflect less optimistic estimates of illegal market conversion, possible periods of disequilibrium between supply and demand, and the possibility that surrounding states or the federal government would also legalize marijuana. The actual impact could be less depending on how many pharmaceutical processors would receive such permits and the amount of sales that they generate. Any such revenues would provide funding to the Virginia Cannabis Control Authority.

The CCA indicates that it is possible that the substitute bill could have fiscal impact as it relates to assisting independent cannabis retailers located in rural and urban opportunity zones. However, that fiscal impact cannot be determined at this time.

According to the Department of Agriculture and Consumer Services (VDACS), the substitute bill is not expected to have a material fiscal impact on agency operations.

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

**10. Technical Amendment Necessary:** No

**11. Other Comments:** TAX indicates that the administrative costs that the agency would incur to collect and account for the excise tax could be recovered by imposing a fee upon such pharmaceutical processors. It is common practice for TAX to recover costs from special

taxes that it administers rather than charging a specific fee. TAX suggests that cost recovery language be added to the Appropriation Act rather than authorizing the imposition of a fee.

The Appropriation Act language requested by TAX is shown below:

Item 274

*CC. The Department of Taxation is hereby appropriated revenues from the excise tax on sales of marijuana pursuant to 2022 Senate Bill 313 to recover any administrative costs for collecting the tax.*