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HOUSE BILL NO. 1134

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact §§ 18.2-248.1, 18.2-250.1, 18.2-251, 18.2-252, 18.2-255, 18.2-255.2, 18.2-258, 18.2-259.1, 18.2-265.3, 18.2-308.1:5, 19.2-386.22, and 53.1-203 of the Code of Virginia and to repeal § 18.2-255.1 of the Code of Virginia, relating to decriminalization of simple possession of marijuana.

Patrons—Morgan, Ebbin and Englin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-248.1, 18.2-250.1, 18.2-251, 18.2-252, 18.2-255, 18.2-255.2, 18.2-258, 18.2-259.1, 18.2-265.3, 18.2-308.1:5, 19.2-386.22, and 53.1-203 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-248.1. Penalties for sale, gift, distribution or possession with intent to sell, give or distribute marijuana.

Except as authorized in the Drug Control Act, Chapter 34 of Title 54.1, it shall be unlawful for any person to sell, give, distribute or possess with intent to sell, give or distribute marijuana.

(a) Any person who violates this section with respect to:

(1) Not more than ~~one-half one~~ ounce of marijuana is guilty of a Class 1 misdemeanor;

(2) More than ~~one-half one~~ ounce but not more than ~~five pounds one~~ pound of marijuana is guilty of a Class 5 felony;

(3) *More than one pound but not more than five pounds of marijuana is guilty of a Class 5 felony;*

(34) More than five pounds of marijuana is guilty of a felony ~~punishable by imprisonment of not less than five nor more than 30 years Class 4 felony.~~

If such person proves that he gave, distributed or possessed with intent to give or distribute marijuana only as an accommodation to another individual and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the marijuana to use or become addicted to or dependent upon such marijuana, he shall be guilty of a Class 1 misdemeanor.

(b) Any person who gives, ~~or distributes or possesses~~ marijuana as an accommodation and not with intent to profit thereby, to an inmate of a state or local correctional facility as defined in § 53.1-1, or in the custody of an employee thereof shall be guilty of a Class 4 felony.

(c) Any person who manufactures marijuana, or possesses marijuana with the intent to manufacture such substance, not for his own use is guilty of a felony ~~punishable by imprisonment of not less than five nor more than 30 years and a fine not to exceed \$10,000 Class 6 felony.~~ *There shall be a rebuttable presumption that any person who manufactures marijuana, or possesses marijuana with the intent to manufacture such substance and who so manufactures or possesses no more than five marijuana plants manufactures or possesses it for his own use. Any person who so manufactures or possesses marijuana for his own use shall be subject to the penalty provisions of § 18.2-250.1.*

(d) When a person is convicted of a third or subsequent felony offense under this section and it is alleged in the warrant, indictment or information that he has been before convicted of two or more felony offenses under this section or of substantially similar offenses in any other jurisdiction which offenses would be felonies if committed in the Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant, indictment or information, he shall be sentenced to imprisonment for life or for any period not less than five years, five years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence and he shall be fined not more than \$500,000.

§ 18.2-250.1. Possession of marijuana unlawful.

A. It is unlawful for any person knowingly or intentionally to possess marijuana unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Drug Control Act (§ 54.1-3400 et seq.). *The attorney for the Commonwealth or the county, city or town attorney may prosecute such a case. Any violation of this section may be charged by summons.*

Upon the prosecution of a person for violation of this section, ownership or occupancy of the premises or vehicle upon or in which marijuana was found shall not create a presumption that such person either knowingly or intentionally possessed such marijuana.

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59 Any person who violates this section shall be guilty of a misdemeanor, and be confined in jail not
60 more than thirty days and a fine is subject to a civil penalty of not more than \$500; either or both; any
61 person, upon a second or subsequent conviction of a violation of this section, shall be guilty of a Class
62 1 misdemeanor payable to the Literary Fund.

63 B. The provisions of this section shall not apply to members of state, federal, county, city or town
64 law-enforcement agencies, jail officers, or correctional officers, as defined in § 53.1-1, certified as
65 handlers of dogs trained in the detection of controlled substances when possession of marijuana is
66 necessary for the performance of their duties.

67 § 18.2-251. Persons charged with first offense may be placed on probation; conditions; substance
68 abuse screening, assessment treatment and education programs or services; drug tests; costs and fees;
69 violations; discharge.

70 Whenever any person who has not previously been convicted of any *criminal* offense under this
71 article or under any statute of the United States or of any state relating to narcotic drugs, ~~marijuana~~, or
72 stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for
73 violation of such an offense dismissed as provided in this section, pleads guilty to or enters a plea of
74 not guilty to possession of a controlled substance under § 18.2-250 or to possession of ~~marijuana~~ under
75 ~~§ 18.2-250.1~~, the court, upon such plea if the facts found by the court would justify a finding of guilt,
76 without entering a judgment of guilt and with the consent of the accused, may defer further proceedings
77 and place him on probation upon terms and conditions.

78 As a term or condition, the court shall require the accused to undergo a substance abuse assessment
79 pursuant to § 18.2-251.01 or 19.2-299.2, as appropriate, and enter treatment and/or education program or
80 services, if available, such as, in the opinion of the court, may be best suited to the needs of the accused
81 based upon consideration of the substance abuse assessment. The program or services may be located in
82 the judicial district in which the charge is brought or in any other judicial district as the court may
83 provide. The services shall be provided by (i) a program licensed by the Department of Behavioral
84 Health and Developmental Services, by a similar program which is made available through the
85 Department of Corrections, (ii) a local community-based probation services agency established pursuant
86 to § 9.1-174, or (iii) an ASAP program certified by the Commission on VASAP.

87 The court shall require the person entering such program under the provisions of this section to pay
88 all or part of the costs of the program, including the costs of the screening, assessment, testing, and
89 treatment, based upon the accused's ability to pay unless the person is determined by the court to be
90 indigent.

91 As a condition of probation, the court shall require the accused (i) to successfully complete treatment
92 or education program or services, (ii) to remain drug and alcohol free during the period of probation and
93 submit to such tests during that period as may be necessary and appropriate to determine if the accused
94 is drug and alcohol free, (iii) to make reasonable efforts to secure and maintain employment, and (iv) to
95 comply with a plan of at least 100 hours of community service for a felony and up to 24 hours of
96 community service for a misdemeanor. Such testing shall be conducted by personnel of the supervising
97 probation agency or personnel of any program or agency approved by the supervising probation agency.

98 The court shall, unless done at arrest, order the accused to report to the original arresting
99 law-enforcement agency to submit to fingerprinting.

100 Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as
101 otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person
102 and dismiss the proceedings against him. Discharge and dismissal under this section shall be without
103 adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent
104 proceedings.

105 Notwithstanding any other provision of this section, whenever a court places an individual on
106 probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction
107 for purposes of §§ 18.2-259.1, 22.1-315 and 46.2-390.1, and the driver's license forfeiture provisions of
108 those sections shall be imposed. The provisions of this paragraph shall not be applicable to any offense
109 for which a juvenile has had his license suspended or denied pursuant to § 16.1-278.9 for the same
110 offense.

111 § 18.2-252. Suspended sentence conditioned upon substance abuse screening, assessment, testing, and
112 treatment or education.

113 The trial judge or court trying the case of any person found guilty of (i) violating any law
114 concerning the use, in any manner, of drugs, controlled substances, narcotics, ~~marijuana~~, noxious
115 chemical substances and like substances; (ii) *any criminal violation of any law concerning the use, in*
116 *any manner, of marijuana; or (iii) any civil violation committed by a minor concerning the use, in*
117 *manner, of marijuana*, shall condition any suspended sentence or suspension of any penalty by first
118 requiring such person to agree to undergo a substance abuse screening pursuant to § 18.2-251.01 and to
119 submit to such periodic substance abuse testing, to include alcohol testing, as may be directed by the
120 court. Such testing shall be conducted by the supervising probation agency or by personnel of any

program or agency approved by the supervising probation agency. The cost of such testing ordered by the court shall be paid by the Commonwealth and taxed as a part of the costs of such criminal proceedings. The judge or court shall order the person, as a condition of any suspended sentence *or suspended civil penalty*, to undergo such treatment or education for substance abuse, if available, as the judge or court deems appropriate based upon consideration of the substance abuse assessment. The treatment or education shall be provided by a program or agency licensed by the Department of Behavioral Health and Developmental Services, by a similar program or services available through the Department of Corrections if the court imposes a sentence of one year or more or, if the court imposes a sentence of 12 months or less, by a similar program or services available through a local or regional jail, a local community-based probation services agency established pursuant to § 9.1-174, or an ASAP program certified by the Commission on VASAP.

§ 18.2-255. Distribution of certain drugs to persons under 18 prohibited; penalty.

A. Except as authorized in the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, it shall be unlawful for any person who is at least 18 years of age to knowingly or intentionally (i) distribute any drug classified in Schedule I, II, III or IV ~~or marijuana~~ to any person under 18 years of age who is at least three years his junior or (ii) cause any person under 18 years of age to assist in such distribution of any drug classified in Schedule I, II, III or IV ~~or marijuana~~. Any person violating this ~~provision~~ subsection shall upon conviction be imprisoned in a state correctional facility for a period not less than 10 nor more than 50 years, and fined not more than \$100,000. Five years of the sentence imposed for a conviction under this section involving a Schedule I or II controlled substance ~~or one ounce or more of marijuana~~ shall be a mandatory minimum sentence. ~~Two years of the sentence imposed for a conviction under this section involving less than one ounce of marijuana shall be a mandatory minimum sentence.~~

B. *Except as authorized in the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, it shall be unlawful for any person who is at least 18 years of age to knowingly or intentionally (i) distribute marijuana to any person under 18 years of age who is at least three years his junior or (ii) cause any person under 18 years of age to assist in such distribution of marijuana. A violation of this subsection is a Class 1 misdemeanor.*

BC. It shall be unlawful for any person who is at least 18 years of age to knowingly or intentionally (i) distribute any imitation controlled substance to a person under 18 years of age who is at least three years his junior or (ii) cause any person under 18 years of age to assist in such distribution of any imitation controlled substance. Any person violating this provision shall be guilty of a Class 6 felony.

D. *If a person commits an act violating the provisions of this section, and the same act also violates another provision of law that provides for penalties greater than those provided for by this section, then nothing in this section shall prohibit or bar any prosecution or proceeding under that other provision of law or the imposition of any penalties provided for thereby.*

§ 18.2-255.2. Prohibiting the sale or manufacture of drugs on or near certain properties; penalty.

A. It shall be unlawful for any person to manufacture, sell or distribute or possess with intent to sell, give or distribute any controlled substance, *or imitation controlled substance or marijuana* while:

(i) upon the property, including buildings and grounds, of any public or private elementary, secondary, or post secondary school, or any public or private two-year or four-year institution of higher education, or any clearly marked licensed child day center as defined in § 63.2-100;

(ii) upon public property or any property open to public use within 1,000 feet of the property described in clause (i);

(iii) on any school bus as defined in § 46.2-100;

(iv) upon a designated school bus stop, or upon either public property or any property open to public use which is within 1,000 feet of such school bus stop, during the time when school children are waiting to be picked up and transported to or are being dropped off from school or a school-sponsored activity;

(v) upon the property, including buildings and grounds, of any publicly owned or publicly operated recreation or community center facility or any public library; or

(vi) upon the property of any state facility as defined in § 37.2-100 or upon public property or property open to public use within 1,000 feet of such an institution. It is a violation of the provisions of this section if the person possessed the controlled substance, *or imitation controlled substance or marijuana* on the property described in clauses (i) through (vi) of this subsection, regardless of where the person intended to sell, give or distribute the controlled substance, *or imitation controlled substance or marijuana*. Nothing in this section shall prohibit the authorized distribution of controlled substances.

~~B. Violation of this section~~ A violation of subsection A shall constitute a separate and distinct felony. Any person violating the provisions of this section shall, upon conviction, be imprisoned for a term of not less than one year nor more than five years and fined not more than \$100,000. A second or subsequent conviction hereunder for an offense involving a controlled substance classified in Schedule I,

182 II, or III of the Drug Control Act (§ 54.1-3400 et seq.) ~~or more than one-half ounce of marijuana~~ shall
183 be punished by a mandatory minimum term of imprisonment of one year to be served consecutively
184 with any other sentence. However, if such person proves that he sold such controlled substance ~~or~~
185 ~~marijuana~~ only as an accommodation to another individual and not with intent to profit thereby from
186 any consideration received or expected nor to induce the recipient or intended recipient of the controlled
187 substance ~~or marijuana~~ to use or become addicted to or dependent upon such controlled substance ~~or~~
188 ~~marijuana~~, he shall be guilty of a Class 1 misdemeanor.

189 *C. Any person who manufactures, sells or distributes or possesses with intent to sell, give or*
190 *distribute marijuana in violation of the provisions of subsection A, mutatis mutandis, is guilty of a Class*
191 *6 felony.*

192 *ED.* If a person commits an act violating the provisions of this section, and the same act also
193 violates another provision of law that provides for penalties greater than those provided for by this
194 section, then nothing in this section shall prohibit or bar any prosecution or proceeding under that other
195 provision of law or the imposition of any penalties provided for thereby.

196 § 18.2-258. Certain premises deemed common nuisance; penalty.

197 Any office, store, shop, restaurant, dance hall, theater, poolroom, clubhouse, storehouse, warehouse,
198 dwelling house, apartment, building of any kind, vehicle, vessel, boat, or aircraft, which with the
199 knowledge of the owner, lessor, agent of any such lessor, manager, chief executive officer, operator, or
200 tenant thereof, is frequented by persons under the influence of illegally obtained controlled substances ~~or~~
201 ~~marijuana~~, as defined in § 54.1-3401, or for the purpose of illegally obtaining possession of,
202 manufacturing or distributing controlled substances ~~or marijuana~~, or is used for the illegal possession,
203 manufacture or distribution of controlled substances ~~or marijuana~~, shall be deemed a common nuisance.
204 Any such owner, lessor, agent of any such lessor, manager, chief executive officer, operator, or tenant
205 who knowingly permits, establishes, keeps or maintains such a common nuisance is guilty of a Class 1
206 misdemeanor and, for a second or subsequent offense, a Class 6 felony.

207 § 18.2-259.1. Forfeiture of driver's license for violations of article.

208 A. In addition to any other sanction or penalty imposed for a *criminal* violation of this article *or for*
209 *a civil violation of this article committed by a minor*, the (i) judgment of conviction *or of civil violation*
210 *by a minor* under this article or (ii) placement on probation following deferral of further proceedings
211 under § 18.2-251 or subsection H of § 18.2-258.1 for any such offense shall of itself operate to deprive
212 the person so convicted or placed on probation after deferral of proceedings under § 18.2-251 or
213 subsection H of § 18.2-258.1 of the privilege to drive or operate a motor vehicle, engine, or train in the
214 Commonwealth for a period of six months from the date of such judgment or placement on probation.
215 Such license forfeiture shall be in addition to and shall run consecutively with any other license
216 suspension, revocation or forfeiture in effect or imposed upon the person so convicted or placed on
217 probation. However, a juvenile who has had his license suspended or denied pursuant to § 16.1-278.9
218 shall not have his license forfeited pursuant to this section for the same offense.

219 B. The court trying the case shall order any person so convicted or placed on probation *or any minor*
220 *so penalized for a civil violation* to surrender his driver's license to be disposed of in accordance with
221 the provisions of § 46.2-398 and shall notify the Department of Motor Vehicles of any such conviction
222 entered and of the license forfeiture to be imposed.

223 C. In those cases where the court determines there are compelling circumstances warranting an
224 exception, the court may provide that any individual be issued a restricted license to operate a motor
225 vehicle for any of the purposes set forth in subsection E of § 18.2-271.1. No restricted license issued
226 pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in
227 the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender
228 of such person's license in accordance with the provisions of subsection B and shall forward to the
229 Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this
230 subsection. This order shall specifically enumerate the restrictions imposed and contain such information
231 regarding the person to whom such a permit is issued as is reasonably necessary to identify such person.
232 The court shall also provide a copy of its order to such person who may operate a motor vehicle on the
233 order until receipt from the Commissioner of the Department of Motor Vehicles of a restricted license,
234 but only if the order provides for a restricted license for that period. A copy of the order and, after
235 receipt thereof, the restricted license shall be carried at all times by such person while operating a motor
236 vehicle. The court may require a person issued a restricted permit under the provisions of this subsection
237 to be monitored by an alcohol safety action program during the period of license suspension. Any
238 violation of the terms of the restricted license or of any condition set forth by the court related thereto,
239 or any failure to remain drug-free during such period shall be reported forthwith to the court by such
240 program. Any person who operates a motor vehicle in violation of any restriction imposed pursuant to
241 this section shall be guilty of a violation of § 46.2-301.

242 § 18.2-265.3. Penalties for sale, etc., of drug paraphernalia.

243 A. Any person who sells or possesses with intent to sell drug paraphernalia, knowing, or under

circumstances where one reasonably should know, that it is either designed for use or intended by such person for use to illegally plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce a controlled substance into the human body ~~marijuana or a controlled substance,~~ *shall be is* guilty of a Class 1 misdemeanor.

B. Any person eighteen years of age or older who violates subsection A hereof by selling *such* drug paraphernalia to a minor who *he knows or reasonably should know* is at least three years *his* junior ~~to the accused in age shall be is~~ guilty of a Class 6 felony.

C. Any person eighteen years of age or older who distributes drug paraphernalia *that he knows, or reasonably should know, is either designed for use or intended for use to illegally plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce marijuana into the human body* to a minor ~~shall be who he knows or reasonably should know is at least three years his junior is~~ guilty of a Class 1 misdemeanor.

§ 18.2-308.1:5. Purchase or transportation of firearm by persons convicted of certain drug offenses prohibited.

Any person who, within a thirty-six consecutive month period, has been convicted of two misdemeanor offenses under § 18.2-250 or *of two violations of § 18.2-250.1* shall be ineligible to purchase or transport a handgun. However, upon expiration of a period of five years from the date of the second *such* conviction *of § 18.2-250 or violation of § 18.2-250.1 or combination thereof,* and provided the person has not been convicted of any such offense within that period, the ineligibility shall be removed.

§ 19.2-386.22. Seizure of property used in connection with or derived from illegal drug transactions.

A. The following property shall be subject to lawful seizure by any officer charged with enforcing the provisions of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2: (i) all money, medical equipment, office equipment, laboratory equipment, motor vehicles, and all other personal and real property of any kind or character, used in substantial connection with (a) the illegal manufacture, sale or distribution of controlled substances or possession with intent to sell or distribute controlled substances in violation of § 18.2-248, (b) the sale or distribution of marijuana or possession with intent to distribute *more than one pound of* marijuana in violation of subdivisions (a) (2), (a) (3) and (c) of § 18.2-248.1, or (c) a drug-related offense in violation of § 18.2-474.1; (ii) everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of § 18.2-248 or for marijuana in violation of § 18.2-248.1 or for a controlled substance or marijuana in violation of § 18.2-474.1; and (iii) all moneys or other property, real or personal, traceable to such an exchange, together with any interest or profits derived from the investment of such money or other property. Under the provisions of clause (i), real property shall not be subject to lawful seizure unless the minimum prescribed punishment for the violation is a term of not less than five years.

B. All seizures and forfeitures under this section shall be governed by the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of this title.

§ 53.1-203. Felonies by prisoners; penalties.

It shall be unlawful for a prisoner in a state, local or community correctional facility or in the custody of an employee thereof to:

1. Escape from a correctional facility or from any person in charge of such prisoner;
2. Willfully break, cut or damage any building, furniture, fixture or fastening of such facility or any part thereof for the purpose of escaping, aiding any other prisoner to escape therefrom or rendering such facility less secure as a place of confinement;

3. Make, procure, secrete or have in his possession any instrument, tool or other thing for the purpose of escaping from or aiding another to escape from a correctional facility or employee thereof;

4. Make, procure, secrete or have in his possession a knife, instrument, tool or other thing not authorized by the superintendent or sheriff which is capable of causing death or bodily injury;

5. Procure, sell, secrete or have in his possession any chemical compound which he has not lawfully received;

6. Procure, sell, secrete or have in his possession a controlled substance classified in Schedule III of the Drug Control Act (§ 54.1-3400 et seq.) ~~or marijuana;~~

- 6.1. Procure, sell, secrete or have in his possession marijuana;

7. Introduce into a correctional facility or have in his possession firearms or ammunition for firearms;

8. Willfully burn or destroy by use of any explosive device or substance, in whole or in part, or cause to be so burned or destroyed, any personal property, within any correctional facility;

9. Willfully tamper with, damage, destroy, or disable any fire protection or fire suppression system, equipment, or sprinklers within any correctional facility; or

305 10. Conspire with another prisoner or other prisoners to commit any of the foregoing acts.
306 For violation of any of the provisions of this section, except subdivision 6, the prisoner shall be
307 guilty of a Class 6 felony. For a violation of subdivision 6, he shall be guilty of a Class 5 felony. If the
308 violation is of subdivision 1 of this section and the escapee is a felon, he shall be sentenced to a
309 mandatory minimum term of confinement of one year, which shall be served consecutively with any
310 other sentence. The prisoner shall, upon conviction of escape, immediately commence to serve such
311 escape sentence, and he shall not be eligible for parole during such period. Any prisoner sentenced to
312 life imprisonment who escapes shall not be eligible for parole. No part of the time served for escape
313 shall be credited for the purpose of parole toward the sentence or sentences, the service of which is
314 interrupted for service of the escape sentence, nor shall it be credited for such purpose toward any other
315 sentence.
316 **2. That § 18.2-255.1 of the Code of Virginia is repealed.**