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HOUSE BILL NO. 1605

Offered January 14, 2015

Prefiled January 8, 2015

A *BILL to amend and reenact §§ 18.2-250.1, 18.2-251.1, and 18.2-258.1 of the Code of Virginia, relating to possession or distribution of marijuana for medical purposes; penalties.*

Patron—Plum

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-250.1, 18.2-251.1, and 18.2-258.1 of the Code of Virginia are amended and reenacted as follows:

§ 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 recommendation~~ 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.).

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.

Any person who violates this section ~~shall be~~ *is* guilty of a misdemeanor, and *shall* be confined in jail not more than ~~thirty~~ 30 days and a ~~fine of~~ *fined* not more than \$500, either or both; any person, upon a second or subsequent conviction of a violation of this section, ~~shall be~~ *is* guilty of a Class 1 misdemeanor.

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

§ 18.2-251.1. Possession or distribution of marijuana for medical purposes permitted.

A. No person shall be prosecuted under § 18.2-250 or § 18.2-250.1 for the possession of marijuana or tetrahydrocannabinol when that possession occurs pursuant to a valid ~~prescription recommendation~~ issued by a medical doctor in the course of his professional practice ~~for treatment of cancer or glaucoma~~.

B. No medical doctor shall be prosecuted under § 18.2-248 or § 18.2-248.1 for dispensing or distributing marijuana or tetrahydrocannabinol for medical purposes when such action occurs in the course of his professional practice ~~for treatment of cancer or glaucoma~~.

C. No pharmacist shall be prosecuted under §§ 18.2-248 ~~to~~ or 18.2-248.1 for dispensing or distributing marijuana or tetrahydrocannabinol to any person who holds a valid ~~prescription recommendation~~ of a medical doctor for such substance issued in the course of such doctor's professional practice ~~for treatment of cancer or glaucoma~~.

§ 18.2-258.1. Obtaining drugs, procuring administration of controlled substances, etc., by fraud, deceit, or forgery.

A. It ~~shall be~~ *is* unlawful for any person to obtain or attempt to obtain any drug or procure or attempt to procure the administration of any controlled substance or marijuana: (i) by fraud, deceit, misrepresentation, embezzlement, or subterfuge; (ii) by the forgery or alteration of a prescription, *recommendation made pursuant to § 18.2-251.1*, or ~~of any written order~~; (iii) by the concealment of a material fact; or (iv) by the use of a false name or the giving of a false address.

B. It shall be unlawful for any person to furnish false or fraudulent information in or omit any information from, or willfully make a false statement in, any prescription, order, report, record, or other document required by Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1.

C. It shall be unlawful for any person to use in the course of the manufacture or distribution of a controlled substance or marijuana a license number which is fictitious, revoked, suspended, or issued to another person.

D. It shall be unlawful for any person, for the purpose of obtaining any controlled substance or marijuana to falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, or other authorized person.

E. It shall be unlawful for any person to make or utter any false or forged prescription ~~or false or forged, recommendation made pursuant to § 18.2-251.1, or written order.~~

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59 F. It shall be unlawful for any person to affix any false or forged label to a package or receptacle
60 containing any controlled substance.

61 G. This section shall not apply to officers and employees of the United States, of this
62 Commonwealth, or of a political subdivision of this Commonwealth acting in the course of their
63 employment, who obtain such drugs for investigative, research, or analytical purposes, or to the agents
64 or duly authorized representatives of any pharmaceutical manufacturer who obtain such drugs for
65 investigative, research, or analytical purposes and who are acting in the course of their employment;
66 provided that such manufacturer is licensed under the provisions of the Federal Food, Drug and
67 Cosmetic Act; and provided further, that such pharmaceutical manufacturer, its agents, and *its* duly
68 authorized representatives file with the Board such information as the Board may deem appropriate.

69 H. Except as otherwise provided in this subsection, any person who ~~shall violate~~ *violates* any
70 provision herein ~~shall be~~ *is* guilty of a Class 6 felony.

71 Whenever any person who has not previously been convicted of any offense under this article or
72 under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant,
73 depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of
74 such an offense dismissed, or reduced as provided in this section, pleads guilty to or enters a plea of not
75 guilty to the court for violating this section, upon such plea if the facts found by the court would justify
76 a finding of guilt, the court may place him on probation upon terms and conditions.

77 As a term or condition, the court shall require the accused to be evaluated and enter a treatment
78 and/or education program, if available, such as, in the opinion of the court, may be best suited to the
79 needs of the accused. This program may be located in the judicial circuit in which the charge is brought
80 or in any other judicial circuit as the court may provide. The services shall be provided by a program
81 certified or licensed by the Department of Behavioral Health and Developmental Services. The court
82 shall require the person entering such program under the provisions of this section to pay all or part of
83 the costs of the program, including the costs of the screening, evaluation, testing, and education, based
84 upon the person's ability to pay unless the person is determined by the court to be indigent.

85 As a condition of supervised probation, the court shall require the accused to remain drug free during
86 the period of probation and submit to such tests during that period as may be necessary and appropriate
87 to determine if the accused is drug free. Such testing may be conducted by the personnel of any
88 screening, evaluation, and education program to which the person is referred or by the supervising
89 agency.

90 Unless the accused was fingerprinted at the time of arrest, the court shall order the accused to report
91 to the original arresting law-enforcement agency to submit to fingerprinting.

92 Upon violation of a term or condition, the court may enter an adjudication of guilt upon the felony
93 and proceed as otherwise provided. Upon fulfillment of the terms and conditions of probation, the court
94 shall find the defendant guilty of a Class 1 misdemeanor.

95 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
96 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
97 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
98 **2 of the Acts of Assembly of 2014, Special Session I, requires the Virginia Criminal Sentencing**
99 **Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated**
100 **amount of the necessary appropriation cannot be determined for periods of commitment to the**
101 **custody of the Department of Juvenile Justice.**