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SENATE BILL NO. 1374

Offered January 20, 2015

A *BILL to amend and reenact § 18.2-472.1 of the Code of Virginia, relating to registration requirements.*

Patron—Marsden

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-472.1 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-472.1. Providing false information or failing to provide registration information; penalty; prima facie evidence.

A. Any person subject to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, other than a person convicted of a sexually violent offense or murder as defined in § 9.1-902, who knowingly fails to register or reregister, or who knowingly provides materially false information to the Sex Offender and Crimes Against Minors Registry is guilty of a Class 1 misdemeanor. A second or subsequent conviction for an offense under this subsection is a Class 6 felony.

B. Any person convicted of a sexually violent offense or murder, as defined in § 9.1-902, who knowingly fails to register or reregister, or who knowingly provides materially false information to the Sex Offender and Crimes Against Minors Registry is guilty of a Class 6 felony. A second or subsequent conviction for an offense under this subsection is a Class 5 felony.

C. A prosecution pursuant to this section shall be brought in the city or county where the offender can be found or where the offender last registered or reregistered or, if the offender failed to comply with the duty to register, where the offender was last convicted of an offense for which registration or reregistration is required.

D. At any preliminary hearing pursuant to this section, an affidavit from the State Police issued as required in § 9.1-907 shall be admitted into evidence as prima facie evidence of the failure to comply with the duty to register or reregister. A copy of such affidavit shall be provided to the registrant or his counsel seven days prior to hearing or trial by the attorney for the Commonwealth.

E. The accused in any preliminary hearing in which an affidavit from the State Police issued as required in § 9.1-907 is offered into evidence pursuant to this section shall have the right to summon and call a custodian of records issuing the affidavit and examine him in the same manner as if he had been called as an adverse witness. Such witness shall appear at the cost of the Commonwealth.

F. At any trial or hearing other than a preliminary hearing conducted pursuant to this section, an affidavit from the State Police issued as required in § 9.1-907 shall constitute prima facie evidence of the failure to comply with the duty to register or reregister, provided the requirements of subsection G have been satisfied and the accused has not objected to the admission of the affidavit pursuant to subsection H.

G. If the attorney for the Commonwealth intends to offer the affidavit into evidence in lieu of testimony at a trial or hearing, other than a preliminary hearing, he shall:

1. Provide by mail, delivery, or otherwise, a copy of the affidavit to counsel of record for the accused, or to the accused if he is proceeding pro se, at no charge, no later than 28 days prior to the hearing or trial;

2. Provide simultaneously with the copy of the affidavit so provided under subdivision 1 a notice to the accused of his right to object to having the affidavit admitted without the presence and testimony of a custodian of the records; and

3. File a copy of the affidavit and notice with the clerk of the court hearing the matter on the day that the affidavit and notice are provided to the accused.

H. In any trial or hearing, other than a preliminary hearing, the accused may object in writing to admission of the affidavit, in lieu of testimony, as evidence of the facts stated therein. Such objection shall be filed with the court hearing the matter, with a copy to the attorney for the Commonwealth, no more than 14 days after the affidavit and notice were filed with the clerk by the attorney for the Commonwealth, or the objection shall be deemed waived. If timely objection is made, the affidavit shall not be admissible into evidence unless (i) the objection is waived by the accused or his counsel in writing or before the court, or (ii) the parties stipulate before the court to the admissibility of the affidavit.

I. Where a custodian of the records is not available for hearing or trial and the attorney for the Commonwealth has used due diligence to secure the presence of the person, the court shall order a

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SB1374

59 continuance. Any continuances ordered pursuant to this subsection shall total not more than 90 days if
60 the accused has been held continuously in custody and not more than 180 days if the accused has not
61 been held continuously in custody.

62 J. Any objection by counsel for the accused, or the accused if he is proceeding pro se, to timeliness
63 of the receipt of notice required by subsection G shall be made before hearing or trial upon his receipt
64 of actual notice unless the accused did not receive actual notice prior to hearing or trial. A showing by
65 the Commonwealth that the notice was mailed, delivered, or otherwise provided in compliance with the
66 time requirements of this section shall constitute prima facie evidence that the notice was timely
67 received by the accused. If the court finds upon the accused's objection made pursuant to this
68 subsection, that he did not receive timely notice pursuant to subsection G, the accused's objection shall
69 not be deemed waived and if the objection is made prior to hearing or trial, a continuance shall be
70 ordered if requested by either party. Any continuance ordered pursuant to this subsection shall be subject
71 to the time limitations set forth in subsection I.

72 K. For the purposes of this section any conviction for a substantially similar offense under the laws
73 of (i) any foreign country or any political subdivision thereof, or (ii) any state or territory of the United
74 States or any political subdivision thereof, the District of Columbia, or the United States shall be
75 considered a prior conviction.

76 L. *Failure of the defendant to receive any instructional or informational publication or guidance*
77 *document developed or published by a governmental entity for the purpose of assisting persons required*
78 *to register with registration or other requirements or prohibitions shall not constitute a defense to any*
79 *criminal charge or to a violation of any other requirement or prohibition imposed upon a person for*
80 *whom registration is required, nor shall any civil liability attach to a governmental entity involved in*
81 *the development or publication of any such document.*