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SENATE BILL NO. 1091

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 20, 2017)

(Patrons Prior to Substitute—Senators Ebbin and Stanley)

*A BILL to amend and reenact §§ 18.2-251, 18.2-259.1, and 46.2-390.1 of the Code of Virginia, relating to marijuana offenses; driver's license forfeiture.***Be it enacted by the General Assembly of Virginia:****1. That §§ 18.2-251, 18.2-259.1, and 46.2-390.1 of the Code of Virginia are amended and reenacted as follows:****§ 18.2-251. Persons charged with first offense may be placed on probation; conditions; substance abuse screening, assessment treatment and education programs or services; drug tests; costs and fees; violations; discharge.**

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

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

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

As a condition of probation, the court shall require the accused ~~(i)~~ (a) to successfully complete treatment or education program or services, ~~(ii)~~ (b) to remain drug and alcohol free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug and alcohol free, ~~(iii)~~ (c) to make reasonable efforts to secure and maintain employment, and ~~(iv)~~ (d) to comply with a plan of at least 100 hours of community service for a felony and, up to 24 hours of community service for a misdemeanor, and, if the court does not suspend or revoke the accused's license as a term or condition of probation, at least 100 hours of community service for a violation of § 18.2-250.1. Such testing shall be conducted by personnel of the supervising probation agency or personnel of any program or agency approved by the supervising probation agency.

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

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

Notwithstanding any other provision of this section, whenever a court places an individual on probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction for purposes of §§ 18.2-259.1, 22.1-315, and 46.2-390.1, and the driver's license forfeiture provisions of those sections shall be imposed. *However, if the court places an individual on probation upon terms and conditions for a violation of § 18.2-250.1, such action shall not be treated as a conviction for purposes of § 18.2-259.1 or 46.2-390.1, provided that a court (1) may suspend or revoke an individual's driver's license as a term or condition of probation and (2) shall suspend or revoke an individual's driver's license as a term or condition of probation for a period of six months if the violation of § 18.2-250.1 was committed while such person was in operation of a motor vehicle.* The provisions of this paragraph

60 shall not be applicable to any offense for which a juvenile has had his license suspended or denied
61 pursuant to § 16.1-278.9 for the same offense.

62 **§ 18.2-259.1. Forfeiture of driver's license for violations of article.**

63 A. In addition to any other sanction or penalty imposed for a violation of this article, the (i)
64 judgment of conviction under this article or (ii) placement on probation following deferral of further
65 proceedings under § 18.2-251, *except if the proceeding was for possession of marijuana pursuant to*
66 *§ 18.2-250.1*, or subsection H of § 18.2-258.1 for any such offense shall of itself operate to deprive the
67 person so convicted or placed on probation after deferral of proceedings under § 18.2-251 or subsection
68 H of § 18.2-258.1 of the privilege to drive or operate a motor vehicle, engine, or train in the
69 Commonwealth for a period of six months from the date of such judgment or placement on probation.
70 Such license forfeiture shall be in addition to and shall run consecutively with any other license
71 suspension, revocation or forfeiture in effect or imposed upon the person so convicted or placed on
72 probation. However, a juvenile who has had his license suspended or denied pursuant to § 16.1-278.9
73 shall not have his license forfeited pursuant to this section for the same offense.

74 B. The court trying the case shall order any person so convicted or placed on probation to surrender
75 his driver's license to be disposed of in accordance with the provisions of § 46.2-398 and shall notify the
76 Department of Motor Vehicles of any such conviction entered and of the license forfeiture to be
77 imposed.

78 C. In those cases where the court determines there are compelling circumstances warranting an
79 exception, the court may provide that any individual be issued a restricted license to operate a motor
80 vehicle for any of the purposes set forth in subsection E of § 18.2-271.1. No restricted license issued
81 pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in
82 the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender
83 of such person's license in accordance with the provisions of subsection B and shall forward to the
84 Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this
85 subsection. This order shall specifically enumerate the restrictions imposed and contain such information
86 regarding the person to whom such a permit is issued as is reasonably necessary to identify such person.
87 The court shall also provide a copy of its order to such person who may operate a motor vehicle on the
88 order until receipt from the Commissioner of the Department of Motor Vehicles of a restricted license,
89 but only if the order provides for a restricted license for that period. A copy of the order and, after
90 receipt thereof, the restricted license shall be carried at all times by such person while operating a motor
91 vehicle. The court may require a person issued a restricted permit under the provisions of this subsection
92 to be monitored by an alcohol safety action program during the period of license suspension. Any
93 violation of the terms of the restricted license or of any condition set forth by the court related thereto,
94 or any failure to remain drug-free during such period shall be reported forthwith to the court by such
95 program. Any person who operates a motor vehicle in violation of any restriction imposed pursuant to
96 this section shall be guilty of a violation of § 46.2-301.

97 **§ 46.2-390.1. Required revocation for conviction of drug offenses or deferral of proceedings.**

98 A. Except as otherwise ordered pursuant to § 18.2-259.1, the Commissioner shall forthwith revoke,
99 and not thereafter reissue for six months from the later of (i) the date of conviction or deferral of
100 proceedings under § 18.2-251, *unless the deferral was for proceedings for possession of marijuana*
101 *pursuant to § 18.2-250.1*, or (ii) the next date of eligibility to be licensed, the driver's license,
102 registration card, and license plates of any resident or nonresident on receiving notification of (i) (a) his
103 conviction, (ii) (b) his having been found guilty in the case of a juvenile, or (iii) (c) the deferral of
104 further proceedings against him under § 18.2-251 for any violation of any provisions of Article 1
105 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, *unless the proceedings were for possession of marijuana*
106 *pursuant to § 18.2-250.1*, or of any state or federal law or valid county, city or town ordinance, or a law
107 of any other state substantially similar to provisions of such Virginia laws. Such license revocation shall
108 be in addition to and shall run consecutively with any other license suspension, revocation or forfeiture
109 in effect against such person.

110 B. Any person whose license has been revoked pursuant to this section and § 18.2-259.1 shall be
111 subject to the provisions of §§ 46.2-370 and 46.2-414 and shall be required to pay a reinstatement fee as
112 provided in § 46.2-411 in order to have his license restored.

113 **2. That the provisions of this act are contingent upon receipt by the Virginia Department of**
114 **Transportation of written assurance from the Federal Highway Administration of the U.S.**
115 **Department of Transportation that Virginia will not lose any federal funds as a result of the**
116 **implementation of this act.**