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SENATE BILL NO. 841

Offered January 11, 2017

Prefiled November 17, 2016

A *BILL to amend and reenact §§ 18.2-250.1 and 54.1-3408.3 of the Code of Virginia, relating to possession or distribution of marijuana for medical purposes; exceptions.*

Patrons—Favola and Lewis; Delegate: Murphy

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-250.1 and 54.1-3408.3 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-250.1. Possession of marijuana unlawful; exceptions.

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.).

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 is guilty of a misdemeanor and shall be confined in jail not more than 30 days and fined not more than \$500, either or both; any person, upon a second or subsequent conviction of a violation of this section, 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.

C. In any prosecution under this section involving marijuana in the form of cannabidiol oil or THC-A oil as those terms are defined in § 54.1-3408.3, it shall be an affirmative defense that the individual possessed such oil pursuant to a valid written certification issued by a practitioner in the course of his professional practice pursuant to § 54.1-3408.3 for treatment or to alleviate the symptoms of (i) the individual's intractable epilepsy, *cancer, human immunodeficiency virus, acquired immune deficiency syndrome, Tourette syndrome, amyotrophic lateral sclerosis, multiple sclerosis, Crohn's disease, or complex regional pain syndrome* or (ii) if such individual is the parent or legal guardian of a minor, such minor's intractable epilepsy, *cancer, human immunodeficiency virus, acquired immune deficiency syndrome, Tourette syndrome, amyotrophic lateral sclerosis, multiple sclerosis, Crohn's disease, or complex regional pain syndrome*. If the individual files the valid written certification with the court at least 10 days prior to trial and causes a copy of such written certification to be delivered to the attorney for the Commonwealth, such written certification shall be prima facie evidence that such oil was possessed pursuant to a valid written certification.

§ 54.1-3408.3. Certification for use of cannabidiol oil or THC-A oil to treat certain conditions.

A. As used in this section:

"Cannabidiol oil" means a processed Cannabis plant extract that contains at least 15 percent cannabidiol but no more than five percent tetrahydrocannabinol, or a dilution of the resin of the Cannabis plant that contains at least 50 milligrams of cannabidiol per milliliter but not more than five percent tetrahydrocannabinol.

"THC-A oil" means a processed Cannabis plant extract that contains at least 15 percent tetrahydrocannabinol acid but not more than five percent tetrahydrocannabinol, or a dilution of the resin of the Cannabis plant that contains at least 50 milligrams of tetrahydrocannabinol acid per milliliter but not more than five percent tetrahydrocannabinol.

B. A practitioner of medicine or osteopathy licensed by the Board of Medicine in the course of his professional practice may issue a written certification for the use of cannabidiol oil or THC-A oil for treatment or to alleviate the symptoms of a patient's intractable epilepsy, *cancer, human immunodeficiency virus, acquired immune deficiency syndrome, Tourette syndrome, amyotrophic lateral sclerosis, multiple sclerosis, Crohn's disease, or complex regional pain syndrome*.

C. The written certification shall be on a form provided by the Office of the Executive Secretary of the Supreme Court developed in consultation with the Board of Medicine. Such written certification shall contain the name, address, and telephone number of the practitioner, the name and address of the

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59 patient issued the written certification, the date on which the written certification was made, and the
60 signature of the practitioner. Such written certification issued pursuant to subsection B shall expire no
61 later than one year after its issuance unless the practitioner provides in such written certification an
62 earlier expiration.

63 D. No practitioner shall be prosecuted under § 18.2-248 or 18.2-248.1 for dispensing or distributing
64 cannabidiol oil or THC-A oil for the treatment or to alleviate the symptoms of a patient's intractable
65 epilepsy, *cancer, human immunodeficiency virus, acquired immune deficiency syndrome, Tourette*
66 *syndrome, amyotrophic lateral sclerosis, multiple sclerosis, Crohn's disease, or complex regional pain*
67 *syndrome* pursuant to a written certification issued pursuant to subsection B. Nothing in this section
68 shall preclude the Board of Medicine from sanctioning a practitioner for failing to properly evaluate or
69 treat a patient's medical condition or otherwise violating the applicable standard of care for evaluating or
70 treating medical conditions.