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SENATE BILL NO. 40

Offered January 10, 2018

Prefiled November 21, 2017

A *BILL to amend and reenact §§ 18.2-248.1, 18.2-287.2, 18.2-460, and 19.2-386.22 of the Code of Virginia, relating to marijuana; reduced penalties for distribution or possession with intent to distribute.*

Patrons—Favola and Locke; Delegate: Kory

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-248.1, 18.2-287.2, 18.2-460, and 19.2-386.22 of the Code of Virginia are amended and reenacted as follows:

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

A. Except as authorized in the Drug Control Act, ~~Chapter 34 of Title 54.1~~ (§ 54.1-3400 *et seq.*), it ~~shall be~~ is unlawful for any person to sell, give, distribute, or possess with intent to sell, give, or distribute marijuana.

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

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

(2) 2. More than ~~one-half~~ one ounce but not more than ~~five pounds~~ one pound of marijuana is guilty of a Class 5 6 felony;

(3) 3. More than ~~one pound~~ but not more than five pounds of marijuana is guilty of a Class 5 felony punishable by imprisonment of not less than five nor more than 30 years; and

4. More than five pounds of marijuana is guilty of a 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~~ is guilty of a Class 1 misdemeanor.

(b) C. Any person who gives, or distributes *marijuana to*, or possesses marijuana as an accommodation *to* 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~~ is guilty of a Class 4 felony.

(c) D. 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.

There shall be a rebuttable presumption that a person who possesses no more than one ounce of marijuana possesses it for personal use.

(d) E. 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.

§ 18.2-287.2. Wearing of body armor while committing a crime; penalty.

Any person who, while committing a crime of violence as defined in *subdivision (2) of § 18.2-288* (2) or a felony violation of § 18.2-248 or subdivision (a) 2 or 3 B 2, 3, or 4 of § 18.2-248.1, has in his possession a firearm or knife and is wearing body armor designed to diminish the effect of the impact of a bullet or projectile ~~shall be~~ is guilty of a Class 4 felony.

§ 18.2-460. Obstructing justice; resisting arrest; penalty.

A. If any person without just cause knowingly obstructs a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, ~~any~~ law-enforcement officer, or animal control officer employed pursuant to § 3.2-6555 in the performance of his duties as such or fails or refuses without just cause to cease such obstruction when requested to do so by such judge, magistrate, justice, juror, attorney for the Commonwealth, witness, law-enforcement officer, or animal control officer employed pursuant to

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59 § 3.2-6555, he ~~shall be~~ *is* guilty of a Class 1 misdemeanor.

60 B. Except as provided in subsection C, any person who, by threats or force, knowingly attempts to
61 intimidate or impede a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, ~~any~~
62 law-enforcement officer, or ~~an~~ animal control officer employed pursuant to § 3.2-6555 lawfully engaged
63 in his duties as such, or to obstruct or impede the administration of justice in any court, is guilty of a
64 Class 1 misdemeanor.

65 C. If any person by threats of bodily harm or force knowingly attempts to intimidate or impede a
66 judge, magistrate, justice, juror, attorney for the Commonwealth, witness, ~~any~~ *or* law-enforcement
67 officer, lawfully engaged in the discharge of his duty, or to obstruct or impede the administration of
68 justice in any court relating to a violation of or conspiracy to violate § 18.2-248 ~~or~~, subdivision (a) (3),
69 ~~(b) or (e) B 4 or subsection C or D~~ of § 18.2-248.1, or § 18.2-46.2 or § 18.2-46.3, or relating to the
70 violation of or conspiracy to violate any violent felony offense listed in subsection C of § 17.1-805, he
71 ~~shall be~~ *is* guilty of a Class 5 felony.

72 D. Any person who knowingly and willfully makes any materially false statement or representation
73 to a law-enforcement officer or an animal control officer employed pursuant to § 3.2-6555 who is in the
74 course of conducting an investigation of a crime by another is guilty of a Class 1 misdemeanor.

75 **§ 19.2-386.22. Seizure of property used in connection with or derived from illegal drug**
76 **transactions.**

77 A. The following property shall be subject to lawful seizure by any officer charged with enforcing
78 the provisions of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2: (i) all money, medical
79 equipment, office equipment, laboratory equipment, *and* motor vehicles, and all other personal and real
80 property of any kind or character, used in substantial connection with (a) the illegal manufacture, sale,
81 or distribution of controlled substances or possession with intent to sell or distribute controlled
82 substances in violation of § 18.2-248, (b) the sale or distribution of marijuana or possession with intent
83 to distribute marijuana in violation of subdivisions (a)(2), (a)(3) *and* (e) *subdivision B 2, 3, or 4 or*
84 *subsection D* of § 18.2-248.1, or (c) a drug-related offense in violation of § 18.2-474.1; (ii) everything of
85 value furnished, or intended to be furnished, in exchange for a controlled substance in violation of §
86 18.2-248 or for marijuana in violation of § 18.2-248.1 or for a controlled substance or marijuana in
87 violation of § 18.2-474.1; and (iii) all moneys or other property, real or personal, traceable to such an
88 exchange, together with any interest or profits derived from the investment of such money or other
89 property. Under the provisions of clause (i), real property shall not be subject to lawful seizure unless
90 the minimum prescribed punishment for the violation is a term of not less than five years.

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