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**HOUSE BILL NO. 180**

Offered January 13, 2010

Prefiled January 7, 2010

*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 nexus between possession of marijuana and loss of driving privilege.*

Patron—Morrissey

Referred to Committee for Courts of Justice

**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) to successfully complete treatment or education program or services, (ii) 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) to make reasonable efforts to secure and maintain employment, and (iv) 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. 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, the driver's license forfeiture provisions of those sections shall not be imposed if the facts of the case would justify a finding of guilt only of simple possession of marijuana, unless the facts also demonstrate that the possession of marijuana occurred while the accused was in a motor vehicle.* The provisions of this paragraph shall not be applicable to any offense for which a juvenile has had his license suspended or denied pursuant to § 16.1-278.9 for the same

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59 offense.

60 § 18.2-259.1. Forfeiture of driver's license for violations of article.

61 A. In addition to any other sanction or penalty imposed for a violation of this article, the (i)  
62 judgment of conviction under this article or (ii) placement on probation following deferral of further  
63 proceedings under § 18.2-251 or subsection H of § 18.2-258.1 for any such offense shall of itself operate  
64 to deprive the person so convicted or placed on probation after deferral of proceedings under § 18.2-251  
65 or subsection H of § 18.2-258.1 of the privilege to drive or operate a motor vehicle, engine, or train in  
66 the Commonwealth for a period of six months from the date of such judgment or placement on  
67 probation. Such license forfeiture shall be in addition to and shall run consecutively with any other  
68 license suspension, revocation or forfeiture in effect or imposed upon the person so convicted or placed  
69 on probation. However, a juvenile who has had his license suspended or denied pursuant to § 16.1-278.9  
70 shall not have his license forfeited pursuant to this section for the same offense. *Additionally, no person*  
71 *shall have his license forfeited pursuant to this section if (i) he is found guilty only of simple possession*  
72 *of marijuana or (ii) he is placed on probation after deferral of proceedings under § 18.2-251 when the*  
73 *facts of the case would justify a finding of guilt only of simple possession of marijuana, unless the facts*  
74 *resulting in the finding of guilt or in placement on probation also demonstrate that the person was in*  
75 *possession of marijuana while he was in a motor vehicle.*

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

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

99 § 46.2-390.1. Required revocation for conviction of drug offenses or deferral of proceedings.

100 A. Except as otherwise ordered pursuant to § 18.2-259.1, the Commissioner shall forthwith revoke,  
101 and not thereafter reissue for six months from the later of (i) the date of conviction or deferral of  
102 proceedings under § 18.2-251 or (ii) the next date of eligibility to be licensed, the driver's license,  
103 registration card, and license plates of any resident or nonresident on receiving notification of (ia) his  
104 conviction, (ib) his having been found guilty in the case of a juvenile or (ic) the deferral of further  
105 proceedings against him under § 18.2-251 for any violation of any provisions of Article 1 (§ 18.2-247 et  
106 seq.) of Chapter 7 of Title 18.2, or of any state or federal law or valid county, city or town ordinance,  
107 or a law of any other state substantially similar to provisions of such Virginia laws. Such license  
108 revocation shall be in addition to and shall run consecutively with any other license suspension,  
109 revocation or forfeiture in effect against such person. *However, the provisions of this section shall not*  
110 *apply to any person who is (i) found guilty only of simple possession of marijuana pursuant to*  
111 *§ 18.2-250.1 or (ii) placed on probation after deferral of proceedings under § 18.2-251 when the facts*  
112 *of the case would justify a finding of guilt only of simple possession of marijuana, unless the facts*  
113 *resulting in the finding of guilt or in placement on probation also demonstrate that the person was in*  
114 *possession of marijuana while he was in a motor vehicle.*

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