

## Department of Planning and Budget 2015 Fiscal Impact Statement

**1. Bill Number:** SB1444

<b>House of Origin</b>	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
<b>Second House</b>	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

**2. Patron:** Ebbin

**3. Committee:** Courts of Justice

**4. Title:** Driver's license; marijuana possession

**5. Summary:** This bill revises the existing provision that a person loses his driver's license for six months when convicted of or placed on deferred disposition for a drug offense to provide that the provision does not apply to simple possession of marijuana. The exception applies only to adults; juveniles will still be subject to license suspension.

**6. Budget Amendment Necessary:** No.

**7. Fiscal Impact Estimates:** Preliminary. See #8.

**8. Fiscal Implications:** 23 U.S.C. Section 159 states in subsection (a)(3) that the apportionment of certain federal highway funding to a state is contingent upon whether:

(A) the State has enacted and is enforcing a law that requires in all circumstances or requires in the absence of compelling circumstances warranting an exception—(i) the revocation, or suspension for at least 6 months, of the driver's license of any individual who is convicted, after the enactment of such law, of—(I) any violation of the Controlled Substances Act, or (II) any drug offense; and (ii) a delay in the issuance or reinstatement of a driver's license to such an individual for at least 6 months after the individual applies for the issuance or reinstatement of a driver's license if the individual does not have a driver's license, or the driver's license of the individual is suspended, at the time the individual is so convicted; or

(B) the Governor of the State—(i) submits to the Secretary ... a written certification stating that the Governor is opposed to the enactment or enforcement in the State of a law described in subparagraph (A), relating to the revocation, suspension, issuance, or reinstatement of drivers' licenses to convicted drug offenders; and (ii) submits to the Secretary a written certification that the legislature (including both Houses where applicable) has adopted a resolution expressing its opposition to a law described in clause (i).

SB 1444 would amend Sections 18.2-251, 18.2-259.1 and 46.2-390.1 to remove the statutory requirement for the automatic forfeiture/revocation of a driver's license for the deferral of further proceedings for possession of marijuana under Section 18.2-250.1. SB 1444 states

that for purposes of determining the consequence of a deferral of a charge of possession of marijuana under Section 18.2-251.1 (revocation of a driver's license), it shall not be considered a "conviction." All other deferrals of other drug offenses would remain a "conviction" under Section 18.2-251 resulting in the revocation of a driver's license. Thus, all convictions of a drug offense (including a conviction for possession of marijuana) and all other deferrals for drug offenses would still result in a revocation of a driver's license. It is only the "deferral" of a possession of marijuana charge under Section 18.2-250.1 that would not result in the revocation of a driver's license under this bill.

It is unknown whether under 23 U.S.C. Section 159(a)(3)(A), a "deferral" in section 18.2-251 for possession of marijuana falls under the requirement that a person "convicted" of any drug offense have their driver's license revoked. 23 U.S.C. Section 159(c)(2) defines "convicted" as "the term 'convicted' includes adjudicated as a juvenile." That definition does not provide much guidance. The requirement under the Virginia statutes for the revocation of a driver's license for "any" drug offense conviction or deferral (including a possession of marijuana) has been in effect since 1992. The Federal Highway Administration (FHWA) approved Virginia's language at that time as sufficient to not result in a reduction in highway funding.

What the FHWA would think of this proposed change after over 22 years with no change is unknown. If the FHWA considers a "deferral" under 23 U.S.C. Section 159 to also be a type of conviction under their highway funding laws, it could put Virginia out of compliance with the federal requirements for highway funding. Such a noncompliance ruling could result in the loss of over \$68 million annually from two separate federal sources of federal highway funding. However, states can opt out at no cost and without penalty. Thirty-four states do just that. To opt out, a state legislature and governor must approve an opt-out resolution. The resolution is sent to the Federal Highway Administration who then certifies that a state has properly opted out. States then can change their laws without financial penalty. It's a multi-step process that can take two years from start to finish.

**9. Specific Agency or Political Subdivisions Affected:** Department of Motor Vehicles, Virginia Department of Transportation, Virginia courts.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** None.

**Date:** 1/30/15

**Document:** Janet Vogelgesang G:\14-16\2015 FIS\SB1444.docx

c: Secretary of Transportation