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HOUSE BILL NO. 2135

Offered January 11, 2017

Prefiled January 11, 2017

A BILL to amend and reenact §§ 18.2-250.1, 18.2-251.1, 18.2-258.1, and 54.1-3408.3 of the Code of Virginia, relating to medical marijuana; written certification.

Patron—Levine

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-250.1, 18.2-251.1, 18.2-258.1, and 54.1-3408.3 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-250.1. Possession of marijuana unlawful.

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, or written certification issued pursuant to § 54.1-3408.3 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 or (ii) if such individual is the parent or legal guardian of a minor, such minor's intractable epilepsy. 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.

§ 18.2-251.1. Possession or distribution of marijuana for medical purposes permitted.

A. No person shall be prosecuted under § 18.2-250 or § 18.2-250.1 for the possession of marijuana or tetrahydrocannabinol when that possession occurs pursuant to a valid prescription issued by a medical doctor in the course of his professional practice or valid written certification issued pursuant to § 54.1-3408.3 for the treatment of cancer or glaucoma any medical condition.

B. No medical doctor shall be prosecuted under § 18.2-248 or § 18.2-248.1 for dispensing or distributing marijuana or tetrahydrocannabinol for medical purposes when such action occurs in the course of his professional practice for treatment of cancer or glaucoma.

C. No pharmacist shall be prosecuted under §§ 18.2-248 to through 18.2-248.1 for dispensing or distributing marijuana or tetrahydrocannabinol to any person who holds a valid prescription of a medical doctor or valid written certification issued pursuant to § 54.1-3408.3 for such substance issued in the course of such doctor's professional practice for treatment of cancer or glaucoma.

§ 18.2-258.1. Obtaining drugs, procuring administration of controlled substances, etc., by fraud, deceit, or forgery.

A. It shall be is unlawful for any person to obtain or attempt to obtain any drug or procure or attempt to procure the administration of any controlled substance or marijuana: (i) by fraud, deceit, misrepresentation, embezzlement, or subterfuge; (ii) by the forgery or alteration of a prescription or of any, written order, or written certification issued pursuant to § 54.1-3408.3; (iii) by the concealment of a material fact; or (iv) by the use of a false name or the giving of a false address.

B. It shall be is unlawful for any person to furnish false or fraudulent information in or omit any information from, or willfully make a false statement in, any prescription, order, report, record, written certification issued pursuant to § 54.1-3408.3, or other document required by Chapter 34 (§ 54.1-3400

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59 et seq.) of Title 54.1.

60 C. It ~~shall be~~ *is* unlawful for any person to use in the course of the manufacture or distribution of a
61 controlled substance or marijuana a license number which is fictitious, revoked, suspended, or issued to
62 another person.

63 D. It ~~shall be~~ *is* unlawful for any person, for the purpose of obtaining any controlled substance or
64 marijuana to falsely assume the title of, or represent himself to be, a manufacturer, wholesaler,
65 pharmacist, physician, dentist, veterinarian, or other authorized person.

66 E. It ~~shall be~~ *is* unlawful for any person to make or utter any false or forged prescription ~~or false or~~
67 ~~forged~~, written order, *or written certification issued pursuant to § 54.1-3408.3.*

68 F. It ~~shall be~~ *is* unlawful for any person to affix any false or forged label to a package or receptacle
69 containing any controlled substance.

70 G. This section shall not apply to officers and employees of the United States, of this
71 Commonwealth or of a political subdivision of this Commonwealth acting in the course of their
72 employment, who obtain such drugs for investigative, research, or analytical purposes, or to the agents
73 or duly authorized representatives of any pharmaceutical manufacturer who obtain such drugs for
74 investigative, research, or analytical purposes and who are acting in the course of their employment,
75 provided that such manufacturer is licensed under the provisions of the Federal Food, Drug and
76 Cosmetic Act; and provided further, that such pharmaceutical manufacturer, *and* its agents and duly
77 authorized representatives file with the Board such information as the Board may deem appropriate.

78 H. Except as otherwise provided in this subsection, any person who ~~shall violate~~ *violates* any
79 provision herein ~~shall be~~ *is* guilty of a Class 6 felony.

80 Whenever any person who has not previously been convicted of any offense under this article or
81 under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant,
82 depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of
83 such an offense dismissed, or reduced as provided in this section, pleads guilty to or enters a plea of not
84 guilty to the court for violating this section, upon such plea if the facts found by the court would justify
85 a finding of guilt, the court may place him on probation upon terms and conditions.

86 As a term or condition, the court shall require the accused to be evaluated and enter a treatment
87 and/or education program, if available, such as, in the opinion of the court, may be best suited to the
88 needs of the accused. This program may be located in the judicial circuit in which the charge is brought
89 or in any other judicial circuit as the court may provide. The services shall be provided by a program
90 certified or licensed by the Department of Behavioral Health and Developmental Services. The court
91 shall require the person entering such program under the provisions of this section to pay all or part of
92 the costs of the program, including the costs of the screening, evaluation, testing, and education, based
93 upon the person's ability to pay unless the person is determined by the court to be indigent.

94 As a condition of supervised probation, the court shall require the accused to remain drug free during
95 the period of probation and submit to such tests during that period as may be necessary and appropriate
96 to determine if the accused is drug free. Such testing may be conducted by the personnel of any
97 screening, evaluation, and education program to which the person is referred or by the supervising
98 agency.

99 Unless the accused was fingerprinted at the time of arrest, the court shall order the accused to report
100 to the original arresting law-enforcement agency to submit to fingerprinting.

101 Upon violation of a term or condition, the court may enter an adjudication of guilt upon the felony
102 and proceed as otherwise provided. Upon fulfillment of the terms and conditions of probation, the court
103 shall find the defendant guilty of a Class 1 misdemeanor.

104 **§ 54.1-3408.3. Certification for use of marijuana.**

105 A. As used in this section:

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

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

114 ~~B.~~ A practitioner of medicine or osteopathy licensed by the Board of Medicine in the course of his
115 professional practice may issue a written certification for the use of ~~cannabidiol oil or THC-A oil~~
116 *marijuana* for the treatment or to alleviate the symptoms of a patient's ~~intractable epilepsy medical~~
117 *condition*.

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

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

125 *C. A patient who has been issued a written certification pursuant to subsection A shall register a*
126 *copy of such written certification with the Board and, upon registration, the Board shall issue to the*
127 *patient an identification card. Such identification card shall contain the name, address, and telephone*
128 *number of the practitioner that issued the written certification, the name and address of the patient, and*
129 *the date on which the written certification was made. The Board shall promulgate regulations to*
130 *implement the registration process. Such regulations shall include (i) a mechanism for sufficiently*
131 *identifying the practitioner issuing the written certification and the patient being treated by the*
132 *practitioner and (ii) a prohibition for a patient to be issued a written certification by more than one*
133 *practitioner during any given time period. Information obtained under the registration process shall be*
134 *confidential and shall not be subject to the disclosure provisions of the Virginia Freedom of Information*
135 *Act (§ 2.2-3700 et seq.).*

136 D. No practitioner shall be prosecuted under § 18.2-248 or 18.2-248.1 for dispensing or distributing
137 ~~cannabidiol oil or THC-A oil marijuana~~ for the treatment or to alleviate the symptoms of a patient's
138 ~~intractable epilepsy~~ *medical condition* pursuant to a written certification issued pursuant to subsection B
139 A. Nothing in this section shall preclude the Board of Medicine from sanctioning a practitioner for
140 failing to properly evaluate or treat a patient's medical condition or otherwise violating the applicable
141 standard of care for evaluating or treating medical conditions.

142 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
143 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
144 **be determined_ for periods of imprisonment in state adult correctional facilities; therefore,**
145 **Chapter 780 of the Acts of Assembly of 2016 requires the Virginia Criminal Sentencing**
146 **Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated**
147 **amount of the necessary appropriation cannot be determined for periods of commitment to the**
148 **custody of the Department of Juvenile Justice.**