**A** **BILL**

TO AMEND SECTION 44‑53‑370, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CONTROLLED SUBSTANCE OFFENSES AND PENALTIES, SO AS TO LEGALIZE THE POSSESSION OF TWENTY‑EIGHT GRAMS OR ONE OUNCE OR LESS OF MARIJUANA BY A PERSON WHO HAS A TERMINAL ILLNESS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 44‑53‑370(d)(4) of the 1976 Code is amended to read:

“(4)(a) possession of more than: one gram of cocaine, one hundred milligrams of alpha‑ or beta‑eucaine, four grains of opium, four grains of morphine, two grains of heroin, one hundred milligrams of isonipecaine, twenty‑eight grams or one ounce of marijuana, ten grams of hashish, fifty micrograms of lysergic acid diethylamide (LSD) or its compounds, fifteen tablets, capsules, dosage units, or the equivalent quantity of 3, 4‑methylenedioxymethamphetamine (MDMA), or twenty milliliters or milligrams of gamma hydroxybutyric acid or a controlled substance analogue of gamma hydroxybutyric acid, is prima facie guilty of violation of subsection (a) of this section. Except as provided in subitem (c), a person who violates this subsection with respect to twenty‑eight grams or one ounce or less of marijuana or ten grams or less of hashish is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than thirty days or fined not less than one hundred dollars nor more than two hundred dollars. Conditional discharge may be granted in accordance with the provisions of Section 44‑53‑450 upon approval by the circuit solicitor to the magistrate or municipal judge. As ~~a~~ part of a sentence, a magistrate or municipal judge may require attendance at an approved drug abuse program. Persons charged with the offense of possession of marijuana or hashish under this item may be permitted to enter the pretrial intervention program ~~under the provisions of~~ pursuant to Sections 17‑22‑10 through 17‑22‑160. For a second or subsequent offense, the offender is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not less than two hundred dollars nor more than one thousand dollars, or both. Notwithstanding ~~any other~~ another provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits.

(b) When a person is charged under this subsection for possession of controlled substances, bail shall not exceed the amount of the fine and the assessment provided pursuant to Section 14‑1‑206, 14‑1‑207, or 14‑1‑208, whichever is applicable. A person charged under this item for a first offense for possession of controlled substances may forfeit bail by nonappearance. Upon forfeiture in general sessions court, the fine portion of the bail must be distributed ~~as provided in~~ pursuant to Section 14‑1‑205. The assessment portion of the bail must be distributed ~~as provided in~~ pursuant to Section 14‑1‑206, 14‑1‑207, or 14‑1‑208, whichever is applicable.

(c) Notwithstanding another provision of law, the provisions of this item do not apply to a person with a terminal illness who possesses twenty‑eight grams or one ounce or less of marijuana. For purposes of this subitem, ‘a person with a terminal illness’ means a patient who has been diagnosed by a treating physician with a progressive disease or medical or surgical condition that:

(i) is not considered by a treating physician to be reversible even with administration of available treatments approved by the United States Food and Drug Administration; and

(ii) will result in death in less than one year.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. This act takes effect upon approval by the Governor.

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