SPONSOR: Sen. Paradee & Sen. McBride & Rep. Cooke & Rep. Osienski & Rep. Schwartzkopf & Rep. Kowalko Sens. Delcollo, Hansen, Sokola, Sturgeon; Reps. Baumbach, Chukwuocha, Heffernan, Q. Johnson, Longhurst, Lynn, Matthews

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL NO. 45
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO MARIJUANA.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 4764, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4764. Possession of marijuana; class B misdemeanor, unclassified misdemeanor, or civil violation [For application of this section, see 80 Del. Laws, c. 38, § 6]

(a) ~~Any person under the age of 18 who knowingly or intentionally possesses, uses, or consumes a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, and there is an aggravating factor, shall be guilty of a class B misdemeanor.~~ Any person ~~18 years of age or older~~ who knowingly or intentionally uses, consumes, or possesses other than a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, and there is an aggravating factor, shall be guilty of a class B misdemeanor.

(b) ~~Any person under the age of 18 who knowingly or intentionally possesses, uses, or consumes a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than $100.~~ Any person ~~18 years of age or older~~ who knowingly or intentionally uses, consumes, or possesses other than a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than $575, imprisoned not more than 3 months, or both.

(c)(1) Any person ~~21 years of age or older~~ who knowingly or intentionally possesses a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise

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authorized by this chapter, ~~shall~~ must be assessed a civil penalty of $100 in addition to such routine assessments necessary for the administration of civil violations and the marijuana ~~shall~~ must be forfeited.

(2) Private use or consumption by a person ~~21 years of age or older~~ of a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title ~~shall~~ is likewise be punishable by a civil penalty under this subsection.

(3) ~~Any person 18 years of age or older, but under 21 years of age,~~ Notwithstanding paragraph (c)(1) or (c)(2) of this subsection, any person under 21 years of age who commits ~~any of the acts described in this subsection shall~~ a violation of this subsection must be assessed a civil penalty of $100 for ~~the first offense~~ a first violation of this subsection and a civil penalty of not less than $200 nor more than $500 for a second violation of this subsection and ~~shall be~~ is guilty of an unclassified misdemeanor and must be fined $100 for a ~~second~~ third or subsequent ~~offense.~~ violation of this subsection.

(4) Unpaid fines ~~shall~~ double if not paid within 90 days of final adjudication of ~~the violation.~~ a violation of this subsection.

(d) Any person ~~18 years of age or older~~ who knowingly or intentionally uses or consumes up to a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title in an area accessible to the public or in a moving vehicle, except as otherwise authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than $200, imprisoned not more than 5 days, or both. For purposes of this section "area accessible to the public" means any of the following:

(1) Sidewalks, streets, alleys, parking lots, parks, playgrounds, stores, restaurants, and any other areas to which the general public is invited.

(2) Any outdoor location within a distance of 10 feet from a sidewalk, street, alley, parking lot, park, playground, store, restaurant, or any other area to which the general public is invited.

(3) Any outdoor location within a distance of 10 feet from the entrances, exits, windows that open, or ventilation intakes of any public or private building.

(e) Information concerning a civil offense classified in subsection (c) of this section shall not appear on a person's certified criminal record.

(f) Nothing contained herein shall be construed to repeal or modify any law concerning the medical use of marijuana or tetrahydrocannabinol in any other form, such as Marinol, or the possession of more than 1 ounce of marijuana, or selling, manufacturing, or trafficking in marijuana.

(g) Nothing contained herein shall be construed to repeal or modify existing laws, ordinances or bylaws, regulations, personnel practices, or policies concerning the operation of motor vehicles or other actions taken while under the influence of marijuana.

(h) Nothing contained herein shall be construed to repeal or modify any law or procedure regarding search and seizure.

(i) Any person who was convicted of a single criminal offense under subsection (c) of this ~~section~~ section, as it is in effect on or before [the effective date of this Act], and who was under the age of 21 at the time of the offense may, upon reaching the age of 21, apply for an expungement of the record of the conviction and any indicia of arrest to the court in which the person was convicted. For violations of a criminal offense under subsection (c) of this ~~section~~ section, as it is in effect on or before [the effective date of this Act], an order granting such expungement shall issue upon proof that the person has reached the age of 21, unless the person has failed to comply with the sentencing order or the person has another charge under this section which remains outstanding. Upon issuance of the order of expungement, the records of the conviction and any indicia of arrest shall be dealt with in accordance with the procedures specified in §§ 4373(c), 4374 and 4375 of Title 11. Nothing in this section shall prohibit the Family Court from expunging a record of conviction as otherwise provided by law. The application for or granting of a pardon pursuant to §§ 4361 through 4363 of Title 11 shall not prohibit an expungement under this section. All sentencing orders for violations of a criminal offense under subsection (c) of this ~~section~~ section, as it is in effect on or before [the effective date of this Act], by persons under the age of 21 at the time of the offense shall state that the record of the conviction may be expunged upon reaching the age of 21 and thereafter. The civil filing fee shall apply to applications for expungement plus a $100 fee payable to the State Bureau of Identification for administrative costs.

(j) Notwithstanding any provision of law to the contrary, any person who prior to December 18, 2015, was convicted of a single offense arising from an original charge under this section or any predecessor statute, law or ordinance prohibiting the possession, use or consumption of marijuana or any controlled substance or counterfeit controlled substance classified in § 4714(d)(19) of this title shall be eligible for mandatory expungement of the records of the conviction and all indicia of arrest pursuant to the provisions of § 4373 of Title 11, provided the applicant is otherwise eligible for mandatory expungement as specified therein. Upon issuance of the order of expungement, the records of the conviction and any indicia of arrest shall be dealt with in accordance with the procedures specified in §§ 4373, 4376, and 4377 of Title 11.