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HOUSE BILL NO. 1974

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 3, 2005)

(Patrons Prior to Substitute—Delegates Tata and Carrico [HB 2437])

A *BILL to amend and reenact §18.2-248 of the Code of Virginia, relating to possession of methamphetamine precursor chemicals; penalty.*

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-248 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-248. Manufacturing, selling, giving, distributing or possessing with intent to manufacture, sell, give or distribute a controlled substance or an imitation controlled substance prohibited; penalties.

A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it shall be unlawful for any person to manufacture, sell, give, distribute, or possess with intent to manufacture, sell, give or distribute a controlled substance or an imitation controlled substance.

B. In determining whether any person intends to manufacture, sell, give or distribute an imitation controlled substance, the court may consider, in addition to all other relevant evidence, whether any distribution or attempted distribution of such pill, capsule, tablet or substance in any other form whatsoever included an exchange of or a demand for money or other property as consideration, and, if so, whether the amount of such consideration was substantially greater than the reasonable value of such pill, capsule, tablet or substance in any other form whatsoever, considering the actual chemical composition of such pill, capsule, tablet or substance in any other form whatsoever and, where applicable, the price at which over-the-counter substances of like chemical composition sell.

C. Any person who violates this section with respect to a controlled substance classified in Schedule I or II shall upon conviction be imprisoned for not less than five nor more than 40 years and fined not more than \$500,000. Upon a second or subsequent conviction of such a violation, any such person may, in the discretion of the court or jury imposing the sentence, be sentenced to imprisonment for life or for any period not less than five years and be fined not more than \$500,000.

When a person is convicted of a third or subsequent offense under this subsection and it is alleged in the warrant, indictment or information that he has been before convicted of two or more such offenses or of substantially similar offenses in any other jurisdiction which offenses would be felonies if committed in the Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant, indictment, or information, he shall be sentenced to imprisonment for life or for a period of not less than five years, three years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence and he shall be fined not more than \$500,000.

D. If such person proves that he gave, distributed or possessed with intent to give or distribute a controlled substance classified in Schedule I or II only as an accommodation to another individual who is not an inmate in a community correctional facility, local correctional facility or state correctional facility as defined in § 53.1-1 or in the custody of an employee thereof, and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the controlled substance to use or become addicted to or dependent upon such controlled substance, he shall be guilty of a Class 5 felony.

E. If the violation of the provisions of this article consists of the filling by a pharmacist of the prescription of a person authorized under this article to issue the same, which prescription has not been received in writing by the pharmacist prior to the filling thereof, and such written prescription is in fact received by the pharmacist within one week of the time of filling the same, or if such violation consists of a request by such authorized person for the filling by a pharmacist of a prescription which has not been received in writing by the pharmacist and such prescription is, in fact, written at the time of such request and delivered to the pharmacist within one week thereof, either such offense shall constitute a Class 4 misdemeanor.

F. Any person who violates this section with respect to a controlled substance classified in Schedule III, IV or V or an imitation controlled substance which imitates a controlled substance classified in Schedule III, IV or V, except for an anabolic steroid classified in Schedule III constituting a violation of § 18.2-248.5, shall be guilty of a Class 1 misdemeanor.

G. Any person who violates this section with respect to an imitation controlled substance which imitates a controlled substance classified in Schedule I or II shall be guilty of a Class 6 felony. In any prosecution brought under this subsection, it is not a defense to a violation of this subsection that the defendant believed the imitation controlled substance to actually be a controlled substance.

H. Any person who manufactures, sells, gives, distributes or possesses with the intent to manufacture,

60 sell, give or distribute the following:

- 61 1. 1.0 kilograms or more of a mixture or substance containing a detectable amount of heroin;
- 62 2. 5.0 kilograms or more of a mixture or substance containing a detectable amount of:
- 63 a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and
- 64 derivatives of ecgonine or their salts have been removed;
- 65 b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;
- 66 c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
- 67 d. Any compound, mixture, or preparation which contains any quantity of any of the substances
- 68 referred to in subdivisions a through c;
- 69 3. 2.5 kilograms or more of a mixture or substance described in subdivision 2 which contains
- 70 cocaine base;
- 71 4. 100 kilograms or more of a mixture or substance containing a detectable amount of marijuana; or
- 72 5. 100 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 200 grams or
- 73 more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers,
- 74 or salts of its isomers shall be guilty of a felony punishable by a fine of not more than \$1 million and
- 75 imprisonment for 20 years to life, 20 years of which shall be a mandatory minimum sentence. Such
- 76 mandatory minimum sentence shall not be applicable if the court finds that (i) the person does not have
- 77 a prior conviction for an offense listed in subsection C of § 17.1-805;; (ii) the person did not use
- 78 violence or credible threats of violence or possess a firearm or other dangerous weapon in connection
- 79 with the offense or induce another participant in the offense to do so;; (iii) the offense did not result in
- 80 death or serious bodily injury to any person;; (iv) the person was not an organizer, leader, manager, or
- 81 supervisor of others in the offense, and was not engaged in a continuing criminal enterprise as defined
- 82 in subsection I of this section;; and (v) not later than the time of the sentencing hearing, the person has
- 83 truthfully provided to the Commonwealth all information and evidence the person has concerning the
- 84 offense or offenses that were part of the same course of conduct or of a common scheme or plan, but
- 85 the fact that the person has no relevant or useful other information to provide or that the Commonwealth
- 86 already is aware of the information shall not preclude a determination by the court that the defendant
- 87 has complied with this requirement.

88 H1. Any person who was the principal or one of several principal administrators, organizers or

89 leaders of a continuing criminal enterprise shall be guilty of a felony if (i) the enterprise received at

90 least \$100,000 but less than \$250,000 in gross receipts during any 12-month period of its existence from

91 the manufacture, importation, or distribution of heroin or cocaine or ecgonine or methamphetamine or

92 the derivatives, salts, isomers, or salts of isomers thereof or marijuana or (ii) the person engaged in the

93 enterprise to manufacture, sell, give, distribute or possess with the intent to manufacture, sell, give or

94 distribute the following during any 12-month period of its existence:

- 95 1. At least 1.0 kilograms but less than 5.0 kilograms of a mixture or substance containing a
- 96 detectable amount of heroin;
- 97 2. At least 5.0 kilograms but less than 10 kilograms of a mixture or substance containing a detectable
- 98 amount of:
- 99 a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and
- 100 derivatives of ecgonine or their salts have been removed;
- 101 b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;
- 102 c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
- 103 d. Any compound, mixture, or preparation which contains any quantity of any of the substances
- 104 referred to in subdivisions a through c;
- 105 3. At least 2.5 kilograms but less than 5.0 kilograms of a mixture or substance described in
- 106 subdivision 2 which contains cocaine base;
- 107 4. At least 100 kilograms but less than 250 kilograms of a mixture or substance containing a
- 108 detectable amount of marijuana; or
- 109 5. At least 100 grams but less than 250 grams of methamphetamine, its salts, isomers, or salts of its
- 110 isomers or at least 200 grams but less than 1.0 kilograms of a mixture or substance containing a
- 111 detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

112 A conviction under this section shall be punishable by a fine of not more than \$1 million and

113 imprisonment for 20 years to life, 20 years of which shall be a mandatory minimum sentence.

114 H2. Any person who was the principal or one of several principal administrators, organizers or

115 leaders of a continuing criminal enterprise if (i) the enterprise received \$250,000 or more in gross

116 receipts during any 12-month period of its existence from the manufacture, importation, or distribution

117 of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of

118 isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture, sell, give,

119 distribute or possess with the intent to manufacture, sell, give or distribute the following during any

120 12-month period of its existence:

- 121 1. At least 5.0 kilograms of a mixture or substance containing a detectable amount of heroin;

- 122 2. At least 10 kilograms of a mixture or substance containing a detectable amount of:
 123 a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and
 124 derivatives of ecgonine or their salts have been removed;
 125 b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 126 c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
 127 d. Any compound, mixture, or preparation which contains any quantity of any of the substances
 128 referred to in subdivisions a through c;
 129 3. At least 5.0 kilograms of a mixture or substance described in subdivision 2 which contains cocaine
 130 base;
 131 4. At least 250 kilograms of a mixture or substance containing a detectable amount of marijuana; or
 132 5. At least 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 1.0
 133 kilograms of a mixture or substance containing a detectable amount of methamphetamine, its salts,
 134 isomers, or salts of its isomers shall be guilty of a felony punishable by a fine of not more than \$1
 135 million and imprisonment for life, which shall be served with no suspension in whole or in part. Such
 136 punishment shall be made to run consecutively with any other sentence. However, the court may impose
 137 a mandatory minimum sentence of 40 years if the court finds that the defendant substantially cooperated
 138 with law-enforcement authorities.
- 139 I. For purposes of this section, a person is engaged in a continuing criminal enterprise if (i) he
 140 violates any provision of this section, the punishment for which is a felony and (ii) such violation is a
 141 part of a continuing series of violations of this section which are undertaken by such person in concert
 142 with five or more other persons with respect to whom such person occupies a position of organizer, a
 143 supervisory position, or any other position of management, and from which such person obtains
 144 substantial income or resources.
- 145 *J. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), any person who possesses any*
 146 *two or more different substances listed below with the intent to manufacture methamphetamine,*
 147 *methcathinone or amphetamine is guilty of a Class 6 felony: liquified ammonia gas, ether,*
 148 *hypophosphorus acid solutions, hypophosphite salts, hydrochloric acid, iodine crystals or tincture of*
 149 *iodine, phenylacetone, phenylacetic acid, red phosphorus, methylamine, methyl formamide, lithium metal,*
 150 *sodium metal, sulfuric acid, sodium hydroxide, potassium dichromate, sodium dichromate, potassium*
 151 *permanganate, chromium trioxide, methylbenzene, methamphetamine precursor drugs, trichloroethane, or*
 152 *2-propanone.*
- 153 *K. The term "methamphetamine precursor drug," when used in this article, means a drug or product*
 154 *containing ephedrine, pseudoephedrine, or phenylpropanolamine or any of their salts, optical isomers,*
 155 *or salts of optical isomers.*
- 156 2. That the Virginia Department of State Police, Department of Environmental Quality,
 157 Department of Health, and the Division of Forensic Science, together, shall establish a
 158 multi-agency work group to develop a best-practices protocol for use by law-enforcement and
 159 emergency response agencies regarding the clean-up of abandoned and deactivated
 160 methamphetamine production sites and that the protocol shall be developed on or before
 161 September 1, 2005. The work group shall consult with the Virginia Sheriff's Association, the
 162 Virginia Association of Chiefs of Police, and the Virginia Fire Chiefs Association in the
 163 development of the protocol.
- 164 3. That the provisions of this act may result in a net increase in periods of imprisonment or
 165 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot
 166 be determined for periods of imprisonment in state adult correctional facilities and cannot be
 167 determined for periods of commitment to the custody of the Department of Juvenile Justice.