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SENATE BILL NO. 1178

Offered January 12, 2005

Prefiled January 12, 2005

A *BILL to amend and reenact §§ 54.1-3457 and 54.1-3458 of the Code of Virginia, relating to counterfeiting prescription drugs; penalty.*

Patron—Stolle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-3457 and 54.1-3458 of the Code of Virginia are amended and reenacted as follows:
§ 54.1-3457. Prohibited acts.

A. *For the purposes of this chapter, "counterfeit drug" means a substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance, and which thereby purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.*

B. The following acts shall be prohibited:

1. The manufacture, sale, or delivery, holding, or offering for sale of any drug, device, or cosmetic that is adulterated or misbranded.

2. The adulteration or misbranding of any drug, device, or cosmetic.

3. The receipt in commerce of any drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

4. The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of § 54.1-3421.

5. The dissemination of any false advertisement.

6. The refusal to permit entry or inspection, or to permit the taking of a sample, or to permit access to or copying of any record.

7. The giving of a false guaranty or undertaking.

8. The removal or disposal of a detained article in violation of § 54.1-3459.

9. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being adulterated or misbranded.

10. The forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this chapter or of the federal act.

11. The using by any person to his own advantage, or revealing, other than to the Board or its authorized representative or to the courts when relevant in any judicial proceeding under this chapter of any information acquired under authority of this chapter concerning any method or process which as a trade secret is entitled to protection.

12. The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under § 54.1-3421, or that such drug complies with the provisions of such section.

13. In the case of a drug distributed or offered for sale in ~~this~~ the Commonwealth, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal act. This subdivision shall not be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter.

14. Placing or causing to be placed upon any drug or device or container, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; or selling, dispensing, disposing of or causing to be sold, dispensed or disposed of, or concealing or keeping in possession, control or custody, with intent to sell, dispense or dispose of, any drug, device or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by this section or making, selling, disposing of, or causing to be made, sold or disposed of, or keeping in

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SB1178

59 possession, control or custody, or concealing any punch, die, plate, stone, or other thing designed to
60 print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of
61 another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to
62 render such drug a counterfeit drug.

63 15. The doing of any act which causes a drug to be a counterfeit drug, or the sale or dispensing, or
64 the holding for sale or dispensing, of a counterfeit drug.

65 16. Dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or
66 brand of drug ordered or prescribed without the permission of the person ordering or prescribing, except
67 as provided in § 54.1-3408.03 relating to dispensing of therapeutically equivalent drugs.

68 § 54.1-3458. Violations; increased penalty.

69 A. Any person who violates any of the provisions of § 54.1-3457 shall be guilty of a Class 2
70 misdemeanor, *except that any person who knowingly violates subdivision B 15 of § 54.1-3457 shall be*
71 *guilty of a Class 5 felony.*

72 B. No person shall be subject to the penalties of this section for having violated subdivisions 1 and 3
73 of § 54.1-3457 if he establishes a guaranty or undertaking signed by, and containing the name and
74 address of, the person residing in ~~this~~ *the* Commonwealth from whom he received in good faith the
75 article, to the effect that such article is not adulterated or misbranded within the meaning of this chapter.

76 C. No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an
77 advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false
78 advertisement relates, shall be liable under this section for the dissemination of such false advertisement,
79 unless he has refused, on the request of the Board, to furnish the Board the name and post-office
80 address of the manufacturer, packer, distributor, seller, or advertising agency, residing in ~~this~~ *the*
81 Commonwealth who caused him to disseminate such advertisement.

82 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
83 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
84 **be determined for periods of imprisonment in state adult correctional facilities and is \$0 for**
85 **periods of commitment to the custody of the Department of Juvenile Justice.**