

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 18.2-248, 54.1-3434.1, 54.1-3434.2, and 54.1-3434.4 of the Code of Virginia, relating to prescription drugs; penalties.

[S 405]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-248, 54.1-3434.1, 54.1-3434.2, and 54.1-3434.4 of the Code of Virginia are 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. Except as provided in subsection C1, 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, five 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.

Any person who manufactures, sells, gives, distributes or possesses with the intent to manufacture, sell, give, or distribute the following is guilty of a felony punishable by a fine of not more than \$1 million and imprisonment for five years to life, five years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence:

- 1. 100 grams or more of a mixture or substance containing a detectable amount of heroin;
2. 500 grams or more of a mixture or substance containing a detectable amount of:
a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;
c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
d. Any compound, mixture, or preparation that contains any quantity of any of the substances referred to in subdivisions 2a through 2c;
3. 250 grams or more of a mixture or substance described in subdivisions 2a through 2d that contain cocaine base; or
4. 10 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 20 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

The mandatory minimum term of imprisonment to be imposed for a violation of this subsection shall not be applicable if the court finds that:

- a. The person does not have a prior conviction for an offense listed in subsection C of § 17.1-805;
b. The person did not use violence or credible threats of violence or possess a firearm or other

57 dangerous weapon in connection with the offense or induce another participant in the offense to do so;

58 c. The offense did not result in death or serious bodily injury to any person;

59 d. The person was not an organizer, leader, manager, or supervisor of others in the offense, and was
60 not engaged in a continuing criminal enterprise as defined in subsection I; and

61 e. Not later than the time of the sentencing hearing, the person has truthfully provided to the
62 Commonwealth all information and evidence the person has concerning the offense or offenses that were
63 part of the same course of conduct or of a common scheme or plan, but the fact that the person has no
64 relevant or useful other information to provide or that the Commonwealth already is aware of the
65 information shall not preclude a determination by the court that the defendant has complied with this
66 requirement.

67 C1. Any person who violates this section with respect to the manufacturing of methamphetamine, its
68 salts, isomers, or salts of its isomers or less than 200 grams of a mixture or substance containing a
69 detectable amount of methamphetamine, its salts, isomers, or salts of its isomers shall, upon conviction,
70 be imprisoned for not less than 10 nor more than 40 years and fined not more than \$500,000. Upon a
71 second conviction of such a violation, any such person may, in the discretion of the court or jury
72 imposing the sentence, be sentenced to imprisonment for life or for any period not less than 10 years,
73 and be fined not more than \$500,000. When a person is convicted of a third or subsequent offense
74 under this subsection and it is alleged in the warrant, indictment, or information that he has been
75 previously convicted of two or more such offenses or of substantially similar offenses in any other
76 jurisdiction, which offenses would be felonies if committed in the Commonwealth and such prior
77 convictions occurred before the date of the offense alleged in the warrant, indictment, or information, he
78 shall be sentenced to imprisonment for life or for a period not less than 10 years, three years of which
79 shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence
80 and he shall be fined not more than \$500,000. Upon conviction, in addition to any other punishment, a
81 person found guilty of this offense shall be ordered by the court to make restitution, as the court deems
82 appropriate, to any innocent property owner whose property is damaged, destroyed, or otherwise
83 rendered unusable as a result of such methamphetamine production. This restitution may include the
84 person's or his estate's estimated or actual expenses associated with cleanup, removal, or repair of the
85 affected property.

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

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

101 E1. Any person who violates this section with respect to a controlled substance classified in Schedule
102 III except for an anabolic steroid classified in Schedule III, constituting a violation of § 18.2-248.5, shall
103 be guilty of a Class 5 felony.

104 E2. Any person who violates this section with respect to a controlled substance classified in Schedule
105 IV shall be guilty of a Class 6 felony.

106 E3. Any person who proves that he gave, distributed or possessed with the intent to give or distribute
107 a controlled substance classified in Schedule III or IV, except for an anabolic steroid classified in
108 Schedule III, constituting a violation of § 18.2-248.5, only as an accommodation to another individual
109 who is not an inmate in a community correctional facility, local correctional facility or state correctional
110 facility as defined in § 53.1-1 or in the custody of an employee thereof, and not with the intent to profit
111 thereby from any consideration received or expected nor to induce the recipient or intended recipient of
112 the controlled substance to use or become addicted to or dependent upon such controlled substance, is
113 guilty of a Class 1 misdemeanor.

114 F. Any person who violates this section with respect to a controlled substance classified in Schedule
115 V or Schedule VI or an imitation controlled substance which imitates a controlled substance classified in
116 Schedule V or Schedule VI, shall be guilty of a Class 1 misdemeanor.

117 G. Any person who violates this section with respect to an imitation controlled substance which

118 imitates a controlled substance classified in Schedule I, II, III, or IV shall be guilty of a Class 6 felony.
119 In any prosecution brought under this subsection, it is not a defense to a violation of this subsection that
120 the defendant believed the imitation controlled substance to actually be a controlled substance.

121 H. Any person who manufactures, sells, gives, distributes or possesses with the intent to manufacture,
122 sell, give or distribute the following:

123 1. 1.0 kilograms or more of a mixture or substance containing a detectable amount of heroin;

124 2. 5.0 kilograms or more of a mixture or substance containing a detectable amount of:

125 a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and
126 derivatives of ecgonine or their salts have been removed;

127 b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

128 c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

129 d. Any compound, mixture, or preparation which contains any quantity of any of the substances
130 referred to in subdivisions a through c;

131 3. 2.5 kilograms or more of a mixture or substance described in subdivision 2 which contains
132 cocaine base;

133 4. 100 kilograms or more of a mixture or substance containing a detectable amount of marijuana; or

134 5. 100 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 200 grams or

135 more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers,

136 or salts of its isomers shall be guilty of a felony punishable by a fine of not more than \$1 million and

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

138 mandatory minimum sentence shall not be applicable if the court finds that (i) the person does not have

139 a prior conviction for an offense listed in subsection C of § 17.1-805; (ii) the person did not use

140 violence or credible threats of violence or possess a firearm or other dangerous weapon in connection

141 with the offense or induce another participant in the offense to do so; (iii) the offense did not result in

142 death or serious bodily injury to any person; (iv) the person was not an organizer, leader, manager, or

143 supervisor of others in the offense, and was not engaged in a continuing criminal enterprise as defined

144 in subsection I of this section; and (v) not later than the time of the sentencing hearing, the person has

145 truthfully provided to the Commonwealth all information and evidence the person has concerning the

146 offense or offenses that were part of the same course of conduct or of a common scheme or plan, but

147 the fact that the person has no relevant or useful other information to provide or that the Commonwealth

148 already is aware of the information shall not preclude a determination by the court that the defendant

149 has complied with this requirement.

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

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

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

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

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

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

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

157 1. At least 1.0 kilograms but less than 5.0 kilograms of a mixture or substance containing a

158 detectable amount of heroin;

159 2. At least 5.0 kilograms but less than 10 kilograms of a mixture or substance containing a detectable

160 amount of:

161 a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and

162 derivatives of ecgonine or their salts have been removed;

163 b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

164 c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

165 d. Any compound, mixture, or preparation which contains any quantity of any of the substances

166 referred to in subdivisions a through c;

167 3. At least 2.5 kilograms but less than 5.0 kilograms of a mixture or substance described in

168 subdivision 2 which contains cocaine base;

169 4. At least 100 kilograms but less than 250 kilograms of a mixture or substance containing a

170 detectable amount of marijuana; or

171 5. At least 100 grams but less than 250 grams of methamphetamine, its salts, isomers, or salts of its

172 isomers or at least 200 grams but less than 1.0 kilograms of a mixture or substance containing a

173 detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

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

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

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

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

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

179 of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of
 180 isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture, sell, give,
 181 distribute or possess with the intent to manufacture, sell, give or distribute the following during any
 182 12-month period of its existence:

- 183 1. At least 5.0 kilograms of a mixture or substance containing a detectable amount of heroin;
- 184 2. At least 10 kilograms of a mixture or substance containing a detectable amount of:
 - 185 a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and
 186 derivatives of ecgonine or their salts have been removed;
 - 187 b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - 188 c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
 - 189 d. Any compound, mixture, or preparation which contains any quantity of any of the substances
 190 referred to in subdivisions a through c;
- 191 3. At least 5.0 kilograms of a mixture or substance described in subdivision 2 which contains cocaine
 192 base;
- 193 4. At least 250 kilograms of a mixture or substance containing a detectable amount of marijuana; or
- 194 5. At least 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 1.0
 195 kilograms of a mixture or substance containing a detectable amount of methamphetamine, its salts,
 196 isomers, or salts of its isomers shall be guilty of a felony punishable by a fine of not more than \$1
 197 million and imprisonment for life, which shall be served with no suspension in whole or in part. Such
 198 punishment shall be made to run consecutively with any other sentence. However, the court may impose
 199 a mandatory minimum sentence of 40 years if the court finds that the defendant substantially cooperated
 200 with law-enforcement authorities.

201 I. For purposes of this section, a person is engaged in a continuing criminal enterprise if (i) he
 202 violates any provision of this section, the punishment for which is a felony and either (ii) such violation
 203 is a part of a continuing series of violations of this section which are undertaken by such person in
 204 concert with five or more other persons with respect to whom such person occupies a position of
 205 organizer, a supervisory position, or any other position of management, and from which such person
 206 obtains substantial income or resources or (iii) such violation is committed, with respect to
 207 methamphetamine or other controlled substance classified in Schedule I or II, for the benefit of, at the
 208 direction of, or in association with any criminal street gang as defined in § 18.2-46.1.

209 J. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), any person who possesses any
 210 two or more different substances listed below with the intent to manufacture methamphetamine,
 211 methcathinone or amphetamine is guilty of a Class 6 felony: liquified ammonia gas, ether,
 212 hypophosphorus acid solutions, hypophosphite salts, hydrochloric acid, iodine crystals or tincture of
 213 iodine, phenylacetone, phenylacetic acid, red phosphorus, methylamine, methyl formamide, lithium
 214 metal, sodium metal, sulfuric acid, sodium hydroxide, potassium dichromate, sodium dichromate,
 215 potassium permanganate, chromium trioxide, methylbenzene, methamphetamine precursor drugs,
 216 trichloroethane, or 2-propanone.

217 K. The term "methamphetamine precursor drug," when used in this article, means a drug or product
 218 containing ephedrine, pseudoephedrine, or phenylpropanolamine or any of their salts, optical isomers, or
 219 salts of optical isomers.

220 § 54.1-3434.1. Nonresident pharmacies to register with Board.

221 A. Any pharmacy located outside the Commonwealth that ships, mails, or delivers, in any manner,
 222 Schedule II through VI drugs or devices pursuant to a prescription into the Commonwealth shall be
 223 considered a nonresident pharmacy, shall be registered with the Board, *shall designate a pharmacist in*
 224 *charge who is licensed as a pharmacist in Virginia and is responsible for the pharmacy's compliance*
 225 *with this chapter*, and shall disclose to the Board all of the following:

226 1. The location, names, and titles of all principal corporate officers and ~~all pharmacists who are~~
 227 ~~dispensing prescription drugs or devices to residents of the Commonwealth~~ *the name and Virginia*
 228 *license number of the designated pharmacist in charge, if applicable.* A report containing this
 229 information shall be made on an annual basis and within 30 days after any change of office, corporate
 230 officer, or ~~principal~~ *pharmacist in charge.*

231 2. That it maintains, at all times, a current unrestricted license, permit, certificate, or registration to
 232 conduct the pharmacy in compliance with the laws of the jurisdiction, within the United States or within
 233 another jurisdiction that may lawfully deliver prescription drugs directly or indirectly to consumers
 234 within the United States, in which it is a resident. The pharmacy shall also certify that it complies with
 235 all lawful directions and requests for information from the regulatory or licensing agency of the
 236 jurisdiction in which it is licensed as well as with all requests for information made by the Board
 237 pursuant to this section.

238 3. As a prerequisite to registering with the Board, the nonresident pharmacy shall submit a copy of
 239 the most recent inspection report resulting from an inspection conducted by the regulatory or licensing

240 agency of the jurisdiction in which it is located. The inspection report shall be deemed current if the
 241 inspection was conducted within the past five years. However, if the nonresident pharmacy has not been
 242 inspected by the regulatory or licensing agency of the jurisdiction in which it is licensed within the past
 243 five years, the Board may accept an inspection report or other documentation from another entity that is
 244 satisfactory to the Board or the Board may cause an inspection to be conducted by its duly authorized
 245 agent and may charge an inspection fee in an amount sufficient to cover the costs of the inspection.

246 4. *For a nonresident pharmacy that dispenses more than 50 percent of its total prescription volume*
 247 *pursuant to an original prescription order received as a result of solicitation on the Internet, including*
 248 *the solicitation by electronic mail, that it is credentialed and has been inspected and that it has received*
 249 *certification from the National Association of Boards of Pharmacy that it is a Verified Internet*
 250 *Pharmacy Practice Site, or has received certification from a substantially similar program approved by*
 251 *the Board. The Board may, in its discretion, waive the requirements of this subdivision for a*
 252 *nonresident pharmacy that only does business within the Commonwealth in limited transactions.*

253 3 5. That it maintains its records of prescription drugs or dangerous drugs or devices dispensed to
 254 patients in the Commonwealth so that the records are readily retrievable from the records of other drugs
 255 dispensed and provides a copy or report of such dispensing records to the Board, its authorized agents,
 256 or any agent designated by the Superintendent of the Department of State Police upon request within
 257 seven days of receipt of a request.

258 4 6. That its pharmacists do not knowingly fill or dispense a prescription for a patient in Virginia in
 259 violation of § 54.1-3303 *and that it has informed its pharmacists that a pharmacist who dispenses a*
 260 *prescription that he knows or should have known was not written pursuant to a bona fide*
 261 *practitioner-patient relationship is guilty of unlawful distribution of a controlled substance in violation*
 262 *of § 18.2-248.*

263 *The requirement that a nonresident pharmacy have a Virginia licensed pharmacist in charge shall*
 264 *not apply to a registered nonresident pharmacy that provides services as a pharmacy benefits*
 265 *administrator.*

266 B. Any pharmacy subject to this section shall, during its regular hours of operation, but not less than
 267 six days per week, and for a minimum of 40 hours per week, provide a toll-free telephone service to
 268 facilitate communication between patients in the Commonwealth and a pharmacist at the pharmacy who
 269 has access to the patient's records. This toll-free number shall be disclosed on a label affixed to each
 270 container of drugs dispensed to patients in the Commonwealth.

271 C. Pharmacies subject to this section shall comply with the reporting requirements of the Prescription
 272 Monitoring Program as set forth in § 54.1-2521.

273 D. The registration fee shall be the fee specified for pharmacies within Virginia.

274 E. A nonresident pharmacy shall only deliver controlled substances that are dispensed pursuant to a
 275 prescription, directly to the consumer or his designated agent, or directly to a pharmacy located in
 276 Virginia pursuant to regulations of the Board.

277 § 54.1-3434.2. Permit to be issued.

278 The Board shall only register nonresident pharmacies that maintain a current unrestricted license,
 279 certificate, permit, or registration as a pharmacy in a jurisdiction within the United States, or within
 280 another jurisdiction that may lawfully deliver prescription drugs directly or indirectly to consumers
 281 within the United States.

282 Applications for a nonresident pharmacy registration, under this section, shall be made on a form
 283 furnished by the Board. The Board may require such information as it deems is necessary to carry out
 284 the purpose of the section.

285 The permit or nonresident pharmacy registration shall be renewed annually on or before January 1 of
 286 each year. *Renewal is contingent upon the nonresident pharmacy providing documentation of continuing*
 287 *current, unrestricted licensure in the resident jurisdiction and continuing certification if required in*
 288 *subdivision A 4 of § 54.1-3434.1.*

289 § 54.1-3434.4. Prohibited acts.

290 A. It is unlawful for any person or entity which is not registered under this article to (i) conduct the
 291 business of shipping, mailing, or otherwise delivering Schedule II through VI controlled substances into
 292 Virginia or (ii) advertise the availability for purchase of any Schedule II through VI controlled
 293 substances by any citizen of the Commonwealth. Further, it shall be unlawful for any person who is a
 294 resident of Virginia to advertise the pharmacy services of a nonresident pharmacy which has not
 295 registered with the Board, with the knowledge that the advertisement will or is likely to induce members
 296 of the public in the Commonwealth to use the pharmacy to obtain controlled substances.

297 B. *Any controlled substance that is ordered or shipped in violation of any provision of this chapter,*
 298 *shall be considered as contraband and may be seized by any law-enforcement officer or any agent of*
 299 *the Board of Pharmacy.*