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SENATE BILL NO. 405**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee for Courts of Justice
on January 30, 2008)

(Patron Prior to Substitute—Senator Puckett)

*A BILL to amend and reenact §§ 18.2-248, 18.2-258.1, 54.1-3434.1, and 54.1-3434.2 of the Code of Virginia, relating to prescription drugs; penalties.***Be it enacted by the General Assembly of Virginia:****1. That §§ 18.2-248, 18.2-258.1, 54.1-3434.1, and 54.1-3434.2 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 dangerous weapon in connection with the offense or induce another participant in the offense to do so;

60 c. The offense did not result in death or serious bodily injury to any person;
61 d. The person was not an organizer, leader, manager, or supervisor of others in the offense, and was
62 not engaged in a continuing criminal enterprise as defined in subsection I; and

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

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

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

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

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

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

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

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

119 G. Any person who violates this section with respect to an imitation controlled substance which
120 imitates a controlled substance classified in Schedule I, II, III or IV shall be guilty of a Class 6 felony.
121 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, sell, give or distribute the following:

1. 1.0 kilograms or more of a mixture or substance containing a detectable amount of heroin;
2. 5.0 kilograms 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 which contains any quantity of any of the substances referred to in subdivisions a through c;

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

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

5. 100 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 200 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers shall be guilty of a felony punishable by a fine of not more than \$1 million and imprisonment for 20 years to life, 20 years of which shall be a mandatory minimum sentence. Such mandatory minimum sentence shall not be applicable if the court finds that (i) the person does not have a prior conviction for an offense listed in subsection C of § 17.1-805; (ii) the person did not use violence or credible threats of violence or possess a firearm or other dangerous weapon in connection with the offense or induce another participant in the offense to do so; (iii) the offense did not result in death or serious bodily injury to any person; (iv) the person was not an organizer, leader, manager, or supervisor of others in the offense, and was not engaged in a continuing criminal enterprise as defined in subsection I of this section; and (v) not later than the time of the sentencing hearing, the person has truthfully provided to the Commonwealth all information and evidence the person has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the person has no relevant or useful other information to provide or that the Commonwealth already is aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

H1. Any person who was the principal or one of several principal administrators, organizers or leaders of a continuing criminal enterprise shall be guilty of a felony if (i) the enterprise received at least \$100,000 but less than \$250,000 in gross receipts during any 12-month period of its existence from the manufacture, importation, or distribution of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture, sell, give, distribute or possess with the intent to manufacture, sell, give or distribute the following during any 12-month period of its existence:

1. At least 1.0 kilograms but less than 5.0 kilograms of a mixture or substance containing a detectable amount of heroin;

2. At least 5.0 kilograms but less than 10 kilograms 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 which contains any quantity of any of the substances referred to in subdivisions a through c;

3. At least 2.5 kilograms but less than 5.0 kilograms of a mixture or substance described in subdivision 2 which contains cocaine base;

4. At least 100 kilograms but less than 250 kilograms of a mixture or substance containing a detectable amount of marijuana; or

5. At least 100 grams but less than 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 200 grams but less than 1.0 kilograms of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

A conviction under this section shall be punishable by a fine of not more than \$1 million and imprisonment for 20 years to life, 20 years of which shall be a mandatory minimum sentence.

H2. Any person who was the principal or one of several principal administrators, organizers or leaders of a continuing criminal enterprise if (i) the enterprise received \$250,000 or more in gross receipts during any 12-month period of its existence from the manufacture, importation, or distribution of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture, sell, give,

183 distribute or possess with the intent to manufacture, sell, give or distribute the following during any
184 12-month period of its existence:

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

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

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

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

222 § 18.2-258.1. Obtaining drugs, procuring administration of controlled substances, etc., by fraud, deceit
223 or forgery.

224 A. It shall be unlawful for any person to obtain or attempt to obtain any drug or procure or attempt
225 to procure the administration of any controlled substance or marijuana: (i) by fraud, deceit,
226 misrepresentation, embezzlement, or subterfuge; or (ii) by the forgery or alteration of a prescription or of
227 any written order; or (iii) by the concealment of a material fact; or (iv) by the use of a false name or
228 the giving of a false address.

229 B. It shall be unlawful for any person to furnish false or fraudulent information in or omit any
230 information from, or willfully make a false statement in, any prescription, order, report, record, or other
231 document required by Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1.

232 C. It shall be unlawful for any person to use in the course of the manufacture or distribution of a
233 controlled substance or marijuana a license number which is fictitious, revoked, suspended, or issued to
234 another person.

235 D. It shall be unlawful for any person, for the purpose of obtaining any controlled substance or
236 marijuana, to falsely assume the title of, or represent himself to be, a manufacturer, wholesaler,
237 pharmacist, physician, dentist, veterinarian or other authorized person.

238 E. It shall be unlawful for any person to make or utter any false or forged prescription or false or
239 forged written order.

240 F. It shall be unlawful for any person to affix any false or forged label to a package or receptacle
241 containing any controlled substance.

242 G. This section shall not apply to officers and employees of the United States, of this
243 Commonwealth or of a political subdivision of this Commonwealth acting in the course of their
244 employment, who obtain such drugs for investigative, research or analytical purposes, or to the agents or

duly authorized representatives of any pharmaceutical manufacturer who obtain such drugs for investigative, research or analytical purposes and who are acting in the course of their employment; provided that such manufacturer is licensed under the provisions of the Federal Food, Drug and Cosmetic Act; and provided further, that such pharmaceutical manufacturer, its agents and duly authorized representatives file with the Board such information as the Board may deem appropriate.

H. Except as otherwise provided in this subsection, any person who shall violate any provision herein shall be guilty of a Class 6 felony *for the first offense and a Class 5 felony for a second or subsequent offense.*

Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed, or reduced as provided in this section, pleads guilty to or enters a plea of not guilty to the court for violating this section, upon such plea if the facts found by the court would justify a finding of guilt, the court may place him on probation upon terms and conditions.

As a term or condition, the court shall require the accused to be evaluated and enter a treatment and/or education program, if available, such as, in the opinion of the court, may be best suited to the needs of the accused. This program may be located in the judicial circuit in which the charge is brought or in any other judicial circuit as the court may provide. The services shall be provided by a program certified or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The court shall require the person entering such program under the provisions of this section to pay all or part of the costs of the program, including the costs of the screening, evaluation, testing and education, based upon the person's ability to pay unless the person is determined by the court to be indigent.

As a condition of supervised probation, the court shall require the accused to remain drug free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug free. Such testing may be conducted by the personnel of any screening, evaluation, and education program to which the person is referred or by the supervising agency.

Unless the accused was fingerprinted at the time of arrest, the court shall order the accused to report to the original arresting law-enforcement agency to submit to fingerprinting.

Upon violation of a term or condition, the court may enter an adjudication of guilt upon the felony and proceed as otherwise provided. Upon fulfillment of the terms and conditions of probation, the court shall find the defendant guilty of a Class 1 misdemeanor.

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

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

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

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

As a prerequisite to registering with the Board, the nonresident pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the jurisdiction in which it is located. The inspection report shall be deemed current if the inspection was conducted within the past five years. However, if the nonresident pharmacy has not been inspected by the regulatory or licensing agency of the jurisdiction in which it is licensed within the past five years, the Board may accept an inspection report or other documentation from another entity that is satisfactory to the Board or the Board may cause an inspection to be conducted by its duly authorized agent and may charge an inspection fee in an amount sufficient to cover the costs of the inspection.

3. That it maintains its records of prescription drugs or dangerous drugs or devices dispensed to patients in the Commonwealth so that the records are readily retrievable from the records of other drugs

306 dispensed and provides a copy or report of such dispensing records to the Board, its authorized agents,
307 or any agent designated by the Superintendent of the Department of State Police upon request within
308 seven days of receipt of a request.

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

316 *4.5. That its pharmacists do not knowingly fill or dispense a prescription for a patient in Virginia in*
317 *violation of § 54.1-3303 and do not knowingly dispense prescriptions that are not written pursuant to a*
318 *bona fide practitioner-patient relationship.*

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

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

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

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

330 § 54.1-3434.2. Permit to be issued.

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

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

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

342 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
343 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is**
344 **\$606,325 for periods of imprisonment in state adult correctional facilities and \$0 for periods of**
345 **commitment to the custody of the Department of Juvenile Justice.**