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## SENATE BILL NO. 1373

Offered January 13, 2011

A *BILL to amend and reenact §§ 18.2-248.01, 18.2-255, 18.2-255.2, 18.2-308.4, and 54.1-3446 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-248.1:1, relating to penalties for transport, possession, sale or distribution, etc., of synthetic cannabinoids.*

Patrons—Wampler and Puckett

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 18.2-248.01, 18.2-255, 18.2-255.2, 18.2-308.4, and 54.1-3446 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-248.1:1 as follows:**

§ 18.2-248.01. Transporting controlled substances into the Commonwealth; penalty.

Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it is unlawful for any person to transport into the Commonwealth by any means with intent to sell or distribute one ounce or more of cocaine, coca leaves or any salt, compound, derivative or preparation thereof as described in Schedule II of the Drug Control Act or one ounce or more of any other Schedule I or II controlled substance or five or more pounds of marijuana; *except that for synthetic cannabinoids the amount shall be five or more pounds of synthetic cannabinoids. However, if the synthetic cannabinoids is in its pure or almost pure form, prior to mixing or infusing with any other substance to create a preparation that is ready to ingest, it shall be presumed, subject to rebuttal, that it is being transported in to the Commonwealth with the intent to sell or distribute.* A violation of this section shall constitute a separate and distinct felony. Upon conviction, the person shall be sentenced to not less than five years nor more than 40 years imprisonment, three years of which shall be a mandatory minimum term of imprisonment, and a fine not to exceed ~~\$1,000,000~~ *\$1 million*. A second or subsequent conviction hereunder shall be punishable by a mandatory minimum term of imprisonment of 10 years, which shall be served consecutively with any other sentence.

§ 18.2-248.1:1. *Penalties for possession, sale, gift, or distribution of or possession with intent to sell, give, or distribute synthetic cannabinoids.*

A. *For the purposes of this article, synthetic cannabinoids includes any of the controlled substances listed as synthetic cannabinoids in Schedule I of the Drug Control Act (§ 54.1-3400 et seq.) and any preparation, mixture, or substance containing, or mixed or infused with, any detectable amount of a substance listed as synthetic cannabinoids in Schedule I. The criminal penalties applicable to controlled substances in § 18.2-248 shall not be applicable to synthetic cannabinoids.*

B. *It is unlawful for any person to knowingly or intentionally possess synthetic cannabinoids. Any person who violates this subsection is guilty of a Class 1 misdemeanor.*

C. *It is unlawful for any person to sell, give, distribute, or possess with intent to sell, give, or distribute synthetic cannabinoids. Any person who violates this subsection with respect to (i) not more than one-half ounce of synthetic cannabinoids is guilty of a Class 1 misdemeanor; (ii) more than one-half ounce but not more than five pounds of synthetic cannabinoids is guilty of a Class 5 felony; (iii) more than five pounds of synthetic cannabinoids is guilty of a felony punishable by imprisonment of not less than five nor more than 30 years.*

D. *Any person who manufactures synthetic cannabinoids or possesses synthetic cannabinoids with intent to manufacture such substance is guilty of a felony punishable by imprisonment of not less than five nor more than 30 years and a fine not to exceed \$10,000. It shall be presumed, subject to rebuttal, that possession of any amount of synthetic cannabinoids in its pure or almost pure form, prior to mixing or infusing with any other substance to create a preparation that is ready to ingest, constitutes possession with intent to manufacture.*

§ 18.2-255. Distribution of certain drugs to persons under 18 prohibited; penalty.

A. Except as authorized in the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, it shall be unlawful for any person who is at least 18 years of age to knowingly or intentionally (i) distribute any drug classified in Schedule I, II, III or IV or marijuana to any person under 18 years of age who is at least three years his junior or (ii) cause any person under 18 years of age to assist in such distribution of any drug classified in Schedule I, II, III or IV or marijuana. Any person violating this provision shall upon conviction be imprisoned in a state correctional facility for a period not less than 10 nor more than 50 years, and fined not more than \$100,000. Five years of the sentence imposed for a conviction under this section involving a Schedule I or II controlled substance or one ounce or more of

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59 marijuana shall be a mandatory minimum sentence; *except that for synthetic cannabinoids the*  
60 *mandatory minimum sentence of five years applies only if the conviction involves one ounce or more of*  
61 *synthetic cannabinoids.* Two years of the sentence imposed for a conviction under this section involving  
62 *less than one ounce of synthetic cannabinoids or less than one ounce of marijuana* shall be a mandatory  
63 minimum sentence.

64 B. It shall be unlawful for any person who is at least 18 years of age to knowingly or intentionally  
65 (i) distribute any imitation controlled substance to a person under 18 years of age who is at least three  
66 years his junior or (ii) cause any person under 18 years of age to assist in such distribution of any  
67 imitation controlled substance. Any person violating this provision shall be guilty of a Class 6 felony.

68 § 18.2-255.2. Prohibiting the sale or manufacture of drugs on or near certain properties; penalty.

69 A. It shall be unlawful for any person to manufacture, sell or distribute or possess with intent to sell,  
70 give or distribute any controlled substance, imitation controlled substance or marijuana while:

71 (i) ~~upon~~ 1. Upon the property, including buildings and grounds, of any public or private elementary,  
72 secondary, or post secondary school, or any public or private two-year or four-year institution of higher  
73 education, or any clearly marked licensed child day center as defined in § 63.2-100;

74 (ii) ~~upon~~ 2. Upon public property or any property open to public use within 1,000 feet of the  
75 property described in ~~clause (i)~~ subdivision 1;

76 (iii) ~~on~~ 3. On any school bus as defined in § 46.2-100;

77 (iv) ~~upon~~ 4. Upon a designated school bus stop, or upon either public property or any property open  
78 to public use which is within 1,000 feet of such school bus stop, during the time when school children  
79 are waiting to be picked up and transported to or are being dropped off from school or a  
80 school-sponsored activity;

81 (v) ~~upon~~ 5. Upon the property, including buildings and grounds, of any publicly owned or publicly  
82 operated recreation or community center facility or any public library; or

83 (vi) ~~upon~~ 6. Upon the property of any state facility as defined in § 37.2-100 or upon public property  
84 or property open to public use within 1,000 feet of such an institution. It is a violation of the provisions  
85 of this section if the person possessed the controlled substance, imitation controlled substance or  
86 marijuana on the property described in ~~clauses (i)~~ subdivisions 1 through (vi) of this subsection 6,  
87 regardless of where the person intended to sell, give or distribute the controlled substance, imitation  
88 controlled substance or marijuana. Nothing in this section shall prohibit the authorized distribution of  
89 controlled substances.

90 B. Violation of this section shall constitute a separate and distinct felony. Any person violating the  
91 provisions of this section shall, upon conviction, be imprisoned for a term of not less than one year nor  
92 more than five years and fined not more than \$100,000. A second or subsequent conviction hereunder  
93 for an offense involving a controlled substance classified in Schedule I, II, or III of the Drug Control  
94 Act (§ 54.1-3400 et seq.) or more than one-half ounce of marijuana shall be punished by a mandatory  
95 minimum term of imprisonment of one year to be served consecutively with any other sentence; *except*  
96 *that for synthetic cannabinoids the mandatory minimum sentence applies only if the conviction involves*  
97 *more than one-half ounce of synthetic cannabinoids.* However, if such person proves that he sold such  
98 controlled substance or marijuana only as an accommodation to another individual and not with intent to  
99 profit thereby from any consideration received or expected nor to induce the recipient or intended  
100 recipient of the controlled substance or marijuana to use or become addicted to or dependent upon such  
101 controlled substance or marijuana, he shall be guilty of a Class 1 misdemeanor.

102 C. If a person commits an act violating the provisions of this section, and the same act also violates  
103 another provision of law that provides for penalties greater than those provided for by this section, then  
104 nothing in this section shall prohibit or bar any prosecution or proceeding under that other provision of  
105 law or the imposition of any penalties provided for thereby.

106 § 18.2-308.4. Possession of firearms while in possession of certain controlled substances.

107 A. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in  
108 Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 to simultaneously with  
109 knowledge and intent possess any firearm. A violation of this subsection is a Class 6 felony and  
110 constitutes a separate and distinct felony.

111 B. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in  
112 Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) to simultaneously with knowledge and  
113 intent possess any firearm on or about his person. A violation of this subsection is a Class 6 felony and  
114 constitutes a separate and distinct felony and any person convicted hereunder shall be sentenced to a  
115 mandatory minimum term of imprisonment of two years. Such punishment shall be separate and apart  
116 from, and shall be made to run consecutively with, any punishment received for the commission of the  
117 primary felony.

118 C. It shall be unlawful for any person to possess, use, or attempt to use any pistol, shotgun, rifle, or  
119 other firearm or display such weapon in a threatening manner while committing or attempting to commit  
120 the illegal manufacture, sale, distribution, or the possession with the intent to manufacture, sell, or

121 distribute a controlled substance classified in Schedule I or Schedule II of the Drug Control Act  
 122 (§ 54.1-3400 et seq.) of Title 54.1 or more than one pound of marijuana; *except that for synthetic*  
 123 *cannabinoids the violation occurs only if the amount of synthetic cannabinoids is more than one pound.*  
 124 A violation of this subsection is a Class 6 felony, and constitutes a separate and distinct felony and any  
 125 person convicted hereunder shall be sentenced to a mandatory minimum term of imprisonment of five  
 126 years. Such punishment shall be separate and apart from, and shall be made to run consecutively with,  
 127 any punishment received for the commission of the primary felony.

128 § 54.1-3446. Schedule I.

129 The controlled substances listed in this section are included in Schedule I:

130 1. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers,  
 131 esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers  
 132 and salts is possible within the specific chemical designation:

133 Acetylmethadol;

134 Allylprodine;

135 Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol,  
 136 levomethadyl acetate, or LAAM);

137 Alphameprodine;

138 Alphamethadol;

139 Benzethidine;

140 Betacetylmethadol;

141 Betameprodine;

142 Betamethadol;

143 Betaprodine;

144 Clonitazene;

145 Dextromoramide;

146 Diampromide;

147 Diethylthiambutene;

148 Difenoxin;

149 Dimenoxadol;

150 Dimepheptanol;

151 Dimethylthiambutene;

152 Dioxaphetylbutyrate;

153 Dipipanone;

154 Ethylmethylthiambutene;

155 Etonitazene;

156 Etoxadine;

157 Furethidine;

158 Hydroxypethidine;

159 Ketobemidone;

160 Levomoramide;

161 Levophenacymorphan;

162 Morpheridine;

163 Noracymethadol;

164 Norlevorphanol;

165 Normethadone;

166 Norpipanone;

167 Phenadoxone;

168 Phenampromide;

169 Phenomorphan;

170 Phenoperidine;

171 Piritramide;

172 Proheptazine;

173 Properidine;

174 Propiram;

175 Racemoramide;

176 Tilidine;

177 Trimeperidine.

178 2. Any of the following opium derivatives, their salts, isomers and salts of isomers, unless  
 179 specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible  
 180 within the specific chemical designation:

181 Acetorphine;

- 182 Acetyldihydrocodeine;  
183 Benzylmorphine;  
184 Codeine methylbromide;  
185 Codeine-N-Oxide;  
186 Cyprenorphine;  
187 Desomorphine;  
188 Dihydromorphine;  
189 Drotebanol;  
190 Etorphine;  
191 Heroin;  
192 Hydromorphenol;  
193 Methyldesorphine;  
194 Methyldihydromorphine;  
195 Morphine methylbromide;  
196 Morphine methylsulfonate;  
197 Morphine-N-Oxide;  
198 Myrophine;  
199 Nicocodeine;  
200 Nicomorphine;  
201 Normorphine;  
202 Pholcodine;  
203 Thebacon.
- 204 3. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture,  
205 or preparation, which contains any quantity of the following hallucinogenic substances, or which  
206 contains any of its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers,  
207 and salts of isomers is possible within the specific chemical designation (for purposes of this subdivision  
208 only, the term "isomer" includes the optical, position, and geometric isomers):
- 209 Alpha-ethyltryptamine (some trade or other names: Monase;a-ethyl-1H-indole-3-ethanamine;  
210 3-2-aminobutyl] indole; a-ET; AET);  
211 4-Bromo-2,5-dimethoxyphenethylamine (some trade or other names:  
212 2-4-bromo-2,5-dimethoxyphenyl]-1-aminoethane;alpha-desmethyl DOB;2C-B; Nexus);  
213 3,4-methylenedioxy amphetamine;  
214 5-methoxy-3,4-methylenedioxy amphetamine;  
215 3,4,5-trimethoxy amphetamine;  
216 Alpha-methyltryptamine (other name: AMT);  
217 Bufotenine;  
218 Diethyltryptamine;  
219 Dimethyltryptamine;  
220 4-methyl-2,5-dimethoxyamphetamine;  
221 2,5-dimethoxy-4-ethylamphetamine (DOET);  
222 2,5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C-T-7);  
223 Ibogaine;  
224 5-methoxy-N,N-diisopropyltryptamine (other name: 5-MeO-DIPT);  
225 Lysergic acid diethylamide;  
226 Mescaline;  
227 Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6,  
228 9-trimethyl-6H-dibenzo -b,d] pyran; Synhexyl);  
229 Peyote;  
230 N-ethyl-3-piperidyl benzilate;  
231 N-methyl-3-piperidyl benzilate;  
232 Psilocybin;  
233 Psilocyn;  
234 Salvinorin A;  
235 Tetrahydrocannabinols, except as present in marijuana and dronabinol in sesame oil and encapsulated  
236 in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration;  
237 Hashish oil (some trade or other names: hash oil; liquid marijuana; liquid hashish);  
238 2,5-dimethoxyamphetamine (some trade or other names: 2,5-dimethoxy-a-methylphenethylamine;  
239 2,5-DMA);  
240 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts  
241 and salts of isomers;  
242 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4  
243 (methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA);

- 244 N-hydroxy-3,4-methylenedioxyamphetamine (some other names:  
 245 N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA);  
 246 4-bromo-2,5-dimethoxyamphetamine (some trade or other names:  
 247 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA);  
 248 4-methoxyamphetamine (some trade or other names: 4-methoxy-a-methylphenethylamine;  
 249 paramethoxyamphetamine; PMA);  
 250 Ethylamine analog of phencyclidine (some other names: N-ethyl-1-phenylcyclohexylamine,  
 251 (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE);  
 252 Pyrrolidine analog of phencyclidine (some other names: 1-(1-phenylcyclohexyl) -pyrrolidine, PCPy,  
 253 PHP);  
 254 Thiophene analog of phencyclidine (some other names: 1-1-(2-thienyl) -cyclohexyl]-piperidine,  
 255 2-thienyl analog of phencyclidine, TPCP, TCP);  
 256 1-1-(2-thienyl)cyclohexyl]pyrrolidine (other name: TCPy);  
 257 *Synthetic cannabinoids, which means a substance that contains one or more of the following:*  
 258 *5-(1,1-Dimethylheptyl)-2-[3-hydroxycyclohexyl]-phenol (other name: CP 47,497);*  
 259 *5-(1,1-Dimethylhexyl)-2-[3-hydroxycyclohexyl]-phenol (other name: CP 47,497 C6 homolog);*  
 260 *5-(1,1-Dimethyloctyl)-2-[3-hydroxycyclohexyl]-phenol (other name: CP 47,497 C8 homolog);*  
 261 *5-(1,1-Dimethylnonyl)-2-[3-hydroxycyclohexyl]-phenol (other name: CP 47,497 C9 homolog);*  
 262 *1-pentyl-3-(1-naphthoyl)indole (other name: JWH-018);*  
 263 *1-butyl-3-(1-naphthoyl)indole (other name: JWH-073);*  
 264 *1-pentyl-3-(2-methoxyphenylacetyl)indole (other name: JWH-250);*  
 265 *1-hexyl-3-(naphthalen-1-oyl)indole (other name: JWH-019);*  
 266 *1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (other name JWH-200);*  
 267 *(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chr-*  
 268 *omen-1-ol (other name: HU-210).*  
 269 4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture  
 270 or preparation which contains any quantity of the following substances having a depressant effect on the  
 271 central nervous system, including its salts, isomers and salts of isomers whenever the existence of such  
 272 salts, isomers and salts of isomers is possible within the specific chemical designation:  
 273 Gamma hydroxybutyric acid (some other names include GHB; gamma hydroxybutyrate;  
 274 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);  
 275 Mecloqualone;  
 276 Methaqualone.  
 277 5. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture  
 278 or preparation which contains any quantity of the following substances having a stimulant effect on the  
 279 central nervous system, including its salts, isomers and salts of isomers:  
 280 Aminorex (some trade or other names; aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,  
 281 5-dihydro-5-phenyl-2-oxazolamine);  
 282 N-Benzylpiperazine (some other names: BZP, 1-benzylpiperazine);  
 283 Fenethylamine;  
 284 Ethylamphetamine;  
 285 Cathinone (some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone,  
 286 2-aminopropiophenone, norephedrone), and any plant material from which Cathinone may be derived;  
 287 Methcathinone (some other names: 2-(methylamino)-propionophenone; alpha-(methylamino)  
 288 propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone;  
 289 monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and UR  
 290 1432);  
 291 Cis-4-methylaminorex (other name: cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);  
 292 N,N-dimethylamphetamine (other names: N,N-alpha-trimethyl-benzeneethanamine,  
 293 N,N-alpha-trimethylphenethylamine).  
 294 6. Any material, compound, mixture or preparation containing any quantity of the following  
 295 substances:  
 296 N-3-methyl-1-(2-phenethyl)-4-piperidyl]-N-phenylpropanamide (other name: 3-methylfentanyl), its  
 297 optical and geometric isomers, salts, and salts of isomers;  
 298 1-methyl-4-phenyl-4-propionoxypiperidine (other name: MPPP), its optical isomers, salts and salts of  
 299 isomers;  
 300 1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine (other name: PEPAP), its optical isomers, salts and  
 301 salts of isomers;  
 302 N-1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide (other names:  
 303 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine), alpha-methylfentanyl);  
 304 N-1-(1-methyl-2-phenethyl)-4-piperidyl]-N-phenylacetamide (other name:

305 acetyl-alpha-methylfentanyl), its optical isomers, salts and salts of isomers;  
306 N-1-(1-methyl-2-(2-thienyl)ethyl-4 piperidyl]-N-phenylpropanamide (other name:  
307 alpha-methylthiofentanyl), its optical isomers, salts and salts of isomers;  
308 N-1-benzyl-4-piperidyl]-N-phenylpropanamide (other name: benzylfentanyl), its optical isomers, salts  
309 and salts of isomers;  
310 N-1-(2-hydroxy-2-phenyl) ethyl-4-piperidyl]-N-phenylpropanamide (other name:  
311 beta-hydroxyfentanyl), its optical isomers, salts and salts of isomers;  
312 N-3-methyl-1-(2-hydroxy-2-phenethyl)-4-piperidyl]-N-phenylpropanamide (other name:  
313 beta-hydroxy-3-methylfentanyl), its optical and geometric isomers, salts and salts of isomers;  
314 N-(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide (other name:  
315 3-methylthiofentanyl), its optical and geometric isomers, salts and salts of isomers;  
316 N-1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (other name: thenylfentanyl), its optical  
317 isomers, salts and salts of isomers;  
318 N-phenyl-N-1-(2-thienyl)ethyl-4-piperidinyl]-propanamide (other name: thiofentanyl), its optical  
319 isomers, salts and salts of isomers;  
320 N-(4-fluorophenyl)-N-1-(2-phenethyl)-4-piperidinyl] propanamide (other name: para-fluorofentanyl),  
321 its optical isomers, salts and salts of isomers.  
322 **2. That an emergency exists and this act is in force from its passage.**  
323 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**  
324 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**  
325 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**  
326 **874 of the Acts of Assembly of 2010 requires the Virginia Criminal Sentencing Commission to**  
327 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**  
328 **necessary appropriation cannot be determined for periods of commitment to the custody of the**  
329 **Department of Juvenile Justice.**