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SENATE BILL NO. 926

Offered January 12, 2011

Prefiled January 10, 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 marijuana.

Patron—McDougle

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 marijuana the amount shall be five or more pounds of synthetic marijuana.* 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~~ or 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, distribution or possession with intent to sell, give or distribute synthetic marijuana.

A. For the purposes of this article, synthetic marijuana includes any of the controlled substances listed as synthetic marijuana 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 marijuana in Schedule I. The criminal penalties applicable to controlled substances in § 18.2-248 shall not be applicable to synthetic marijuana.

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

D. Any person who manufactures synthetic marijuana or possesses synthetic marijuana 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 marijuana 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 marijuana shall be a mandatory minimum sentence; *except that for synthetic marijuana the mandatory minimum sentence of five years applies only if the conviction involves one ounce or more of synthetic*

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59 *marijuana*. Two years of the sentence imposed for a conviction under this section involving *less than*
60 *one ounce of synthetic marijuana or less than one ounce of marijuana* shall be a mandatory minimum
61 sentence.

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

66 § 18.2-255.2. Prohibiting the sale or manufacture of drugs on or near certain properties; penalty.

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

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

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

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

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

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

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

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

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

104 § 18.2-308.4. Possession of firearms while in possession of certain controlled substances.

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

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

116 C. It shall be unlawful for any person to possess, use, or attempt to use any pistol, shotgun, rifle, or
117 other firearm or display such weapon in a threatening manner while committing or attempting to commit
118 the illegal manufacture, sale, distribution, or the possession with the intent to manufacture, sell, or
119 distribute a controlled substance classified in Schedule I or Schedule II of the Drug Control Act
120 (§ 54.1-3400 et seq.) of Title 54.1 or more than one pound of marijuana; *except that for synthetic*

121 *marijuana the violation occurs only if the amount of synthetic marijuana is more than one pound. A*
 122 *violation of this subsection is a Class 6 felony, and constitutes a separate and distinct felony and any*
 123 *person convicted hereunder shall be sentenced to a mandatory minimum term of imprisonment of five*
 124 *years. Such punishment shall be separate and apart from, and shall be made to run consecutively with,*
 125 *any punishment received for the commission of the primary felony.*

126 § 54.1-3446. Schedule I.

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

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

131 Acetylmethadol;

132 Allylprodine;

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

135 Alphameprodine;

136 Alphamethadol;

137 Benzethidine;

138 Betacetylmethadol;

139 Betameprodine;

140 Betamethadol;

141 Betaprodine;

142 Clonitazene;

143 Dextromoramide;

144 Diampromide;

145 Diethylthiambutene;

146 Difenoxin;

147 Dimenoxadol;

148 Dimepheptanol;

149 Dimethylthiambutene;

150 Dioxaphetylbutyrate;

151 Dipipanone;

152 Ethylmethylthiambutene;

153 Etonitazene;

154 Etoxidine;

155 Furethidine;

156 Hydroxypethidine;

157 Ketobemidone;

158 Levomoramide;

159 Levophenacymorphan;

160 Morpheridine;

161 Noracymethadol;

162 Norlevorphanol;

163 Normethadone;

164 Norpipanone;

165 Phenadoxone;

166 Phenampromide;

167 Phenomorphan;

168 Phenoperidine;

169 Piritramide;

170 Proheptazine;

171 Properidine;

172 Propiram;

173 Racemoramide;

174 Tilidine;

175 Trimeperidine.

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

179 Acetorphine;

180 Acetyldihydrocodeine;

181 Benzylmorphine;

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

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

305 alpha-methylthiofentanyl), its optical isomers, salts and salts of isomers;
306 N-1-benzyl-4-piperidyl]N-phenylpropanamide (other name: benzylfentanyl), its optical isomers, salts
307 and salts of isomers;
308 N-1-(2-hydroxy-2-phenyl) ethyl-4-piperidyl]-N-phenylpropanamide (other name:
309 beta-hydroxyfentanyl), its optical isomers, salts and salts of isomers;
310 N-3-methyl-1-(2-hydroxy-2-phenethyl)4-piperidyl]Nphenylpropanamide (other name:
311 betahydroxy3methylfentanyl), its optical and geometric isomers, salts and salts of isomers;
312 N-(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide (other name:
313 3-methylthiofentanyl), its optical and geometric isomers, salts and salts of isomers;
314 N-1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (other name: thenylfentanyl), its optical
315 isomers, salts and salts of isomers;
316 N-phenyl-N-1-(2-thienyl)ethyl-4-piperidinyl]-propanamide (other name: thiofentanyl), its optical
317 isomers, salts and salts of isomers;
318 N-(4-fluorophenyl)-N-1-(2-phenethyl)-4-piperidinyl] propanamide (other name: para-fluorofentanyl),
319 its optical isomers, salts and salts of isomers.
320 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
321 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
322 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
323 **874 of the Acts of Assembly of 2010 requires the Virginia Criminal Sentencing Commission to**
324 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**
325 **necessary appropriation cannot be determined for periods of commitment to the custody of the**
326 **Department of Juvenile Justice.**