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## HOUSE BILL NO. 1806

Offered January 9, 2013

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A *BILL to amend and reenact § 18.2-248 of the Code of Virginia, relating to substances used in manufacturing methamphetamine.*

Patrons—Garrett, Loupassi, Bell, Richard P., Byron, Crockett-Stark, Edmunds, Hodges, Lewis, Marshall, D.W., Merricks, Scott, E.T., Tyler and Webert

Referred to Committee for Courts of Justice

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

**1. That § 18.2-248 of the Code of Virginia is 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 conviction of such a violation, and it is alleged in the warrant, indictment, or information that the person has been before convicted of such an offense or of a substantially similar offense in any other jurisdiction, which offense would be a felony if committed in the Commonwealth, and such prior conviction occurred before the date of the offense alleged in the warrant, indictment, or information, 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, three 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.

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 10 years, 10 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

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58 cocaine base; or

59 4. 10 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 20 grams or  
60 more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers,  
61 or salts of its isomers.

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

64 a. The person does not have a prior conviction for an offense listed in subsection C of § 17.1-805;

65 b. The person did not use violence or credible threats of violence or possess a firearm or other  
66 dangerous weapon in connection with the offense or induce another participant in the offense to do so;

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

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

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

76 C1. Any person who violates this section with respect to the manufacturing of methamphetamine, its  
77 salts, isomers, or salts of its isomers or less than 200 grams of a mixture or substance containing a  
78 detectable amount of methamphetamine, its salts, isomers, or salts of its isomers shall, upon conviction,  
79 be imprisoned for not less than 10 nor more than 40 years and fined not more than \$500,000. Upon a  
80 second conviction of such a violation, any such person may, in the discretion of the court or jury  
81 imposing the sentence, be sentenced to imprisonment for life or for any period not less than 10 years,  
82 and be fined not more than \$500,000. When a person is convicted of a third or subsequent offense  
83 under this subsection and it is alleged in the warrant, indictment, or information that he has been  
84 previously convicted of two or more such offenses or of substantially similar offenses in any other  
85 jurisdiction, which offenses would be felonies if committed in the Commonwealth and such prior  
86 convictions occurred before the date of the offense alleged in the warrant, indictment, or information, he  
87 shall be sentenced to imprisonment for life or for a period not less than 10 years, three years of which  
88 shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence  
89 and he shall be fined not more than \$500,000. Upon conviction, in addition to any other punishment, a  
90 person found guilty of this offense shall be ordered by the court to make restitution, as the court deems  
91 appropriate, to any innocent property owner whose property is damaged, destroyed, or otherwise  
92 rendered unusable as a result of such methamphetamine production. This restitution shall include the  
93 person's or his estate's estimated or actual expenses associated with cleanup, removal, or repair of the  
94 affected property. If the property that is damaged, destroyed, or otherwise rendered unusable as a result  
95 of such methamphetamine production is property owned in whole or in part by the person convicted, the  
96 court shall order the person to pay to the Methamphetamine Cleanup Fund authorized in § 18.2-248.04  
97 the reasonable estimated or actual expenses associated with cleanup, removal, or repair of the affected  
98 property or, if actual or estimated expenses cannot be determined, the sum of \$10,000.

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

106 E. If the violation of the provisions of this article consists of the filling by a pharmacist of the  
107 prescription of a person authorized under this article to issue the same, which prescription has not been  
108 received in writing by the pharmacist prior to the filling thereof, and such written prescription is in fact  
109 received by the pharmacist within one week of the time of filling the same, or if such violation consists  
110 of a request by such authorized person for the filling by a pharmacist of a prescription which has not  
111 been received in writing by the pharmacist and such prescription is, in fact, written at the time of such  
112 request and delivered to the pharmacist within one week thereof, either such offense shall constitute a  
113 Class 4 misdemeanor.

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

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

119 E3. Any person who proves that he gave, distributed or possessed with the intent to give or distribute

a controlled substance classified in Schedule III or IV, except for an anabolic steroid classified in Schedule III, constituting a violation of § 18.2-248.5, only as an accommodation to another individual who is not an inmate in a community correctional facility, local correctional facility or state correctional facility as defined in § 53.1-1 or in the custody of an employee thereof, and not with the intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the controlled substance to use or become addicted to or dependent upon such controlled substance, is guilty of a Class 1 misdemeanor.

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

G. Any person who violates this section with respect to an imitation controlled substance which imitates a controlled substance classified in Schedule I, II, III, or IV shall be guilty of a Class 6 felony. 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

181 subdivision 2 which contains cocaine base;

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

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

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

189 H2. Any person who was the principal or one of several principal administrators, organizers or  
190 leaders of a continuing criminal enterprise if (i) the enterprise received \$250,000 or more in gross  
191 receipts during any 12-month period of its existence from the manufacture, importation, or distribution  
192 of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of  
193 isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture, sell, give,  
194 distribute or possess with the intent to manufacture, sell, give or distribute the following during any  
195 12-month period of its existence:

196 1. At least 5.0 kilograms of a mixture or substance containing a detectable amount of heroin;

197 2. At least 10 kilograms of a mixture or substance containing a detectable amount of:

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

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

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

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

204 3. At least 5.0 kilograms of a mixture or substance described in subdivision 2 which contains cocaine  
205 base;

206 4. At least 250 kilograms of a mixture or substance containing a detectable amount of marijuana; or

207 5. At least 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 1.0  
208 kilograms of a mixture or substance containing a detectable amount of methamphetamine, its salts,  
209 isomers, or salts of its isomers shall be guilty of a felony punishable by a fine of not more than \$1  
210 million and imprisonment for life, which shall be served with no suspension in whole or in part. Such  
211 punishment shall be made to run consecutively with any other sentence. However, the court may impose  
212 a mandatory minimum sentence of 40 years if the court finds that the defendant substantially cooperated  
213 with law-enforcement authorities.

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

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

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

233 2. That the provisions of this act may result in a net increase in periods of imprisonment or  
234 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot  
235 be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter  
236 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing  
237 Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated  
238 amount of the necessary appropriation cannot be determined for periods of commitment to the  
239 custody of the Department of Juvenile Justice.