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HOUSE BILL NO. 1356

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 11, 2022)

(Patron Prior to Substitute—Delegate Anderson)

A BILL to amend and reenact § 18.2-248.01 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-248.05, relating to selling, giving, or distributing fentanyl; penalties.

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-248.01 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-248.05 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 (i) 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; (ii) 100 milligrams or more of any mixture or substance containing a detectable amount of fentanyl, including its isomers, esters, ethers, salts, and salts of isomers, as described in Schedule II of the Drug Control Act; (iii) one ounce or more of any other Schedule I or II controlled substance; or (iv) five or more pounds of 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 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. 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.

§ 18.2-248.05. Selling, giving, or distributing fentanyl to another without such person's knowledge that the substance contains fentanyl; penalties.

A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), any person who sells, gives, or distributes a substance he knows or should know contains two milligrams or more of any mixture or substance containing a detectable amount of fentanyl, including its isomers, esters, ethers, salts, and salts of isomers to another person without such person's knowledge that the substance sold, given, or distributed contains any mixture or substance containing a detectable amount of fentanyl, including its isomers, esters, ethers, salts, and salts of isomers, is guilty of attempted murder of the second degree pursuant to §§ 18.2-26 and 18.2-32. If such sale, gift, or distribution of two milligrams or more of any mixture or substance containing a detectable amount of fentanyl, including its isomers, esters, ethers, salts, and salts of isomers to another person without such person's knowledge that the substance sold, given, or distributed contains any mixture or substance containing a detectable amount of fentanyl, including its isomers, esters, ethers, salts, and salts of isomers, results in the death of such other person from his use of such substance, the person who sold, gave, or distributed the mixture or substance containing a detectable amount of fentanyl, including its isomers, esters, ethers, salts, and salts of isomers, to such person is guilty of murder of the second degree pursuant to § 18.2-32.

B. A violation of this section shall constitute a separate and distinct offense. The provisions of this section shall not preclude prosecution under any other statute.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 552 of the Acts of Assembly of 2021, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.