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SENATE BILL NO. 775

Offered January 8, 1997

A BILL to amend and reenact § 18.2-248.6 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 6 of Title 18.2 an article numbered 9, consisting of sections numbered 18.2-246.1 through 18.2-246.7; and to repeal § 18.2-248.7, relating to money laundering; penalty.

Patrons—Stolle, Benedetti, Bolling, Norment, Saslaw and Schrock

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-248.6 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 6 of Title 18.2 an article numbered 9, consisting of sections numbered 18.2-246.1 through 18.2-246.7, as follows:

Article 9.

Virginia Comprehensive Money Laundering Act.

§ 18.2-246.1. Title.

This article shall be known and may be cited as the "Virginia Comprehensive Money Laundering Act."

§ 18.2-246.2. Definitions:

"Conduct" or "conducts" includes initiating, concluding, or participating in initiating or concluding, or assisting in or facilitating a transaction.

"Financial transaction" means any purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, purchase or sale of monetary instruments, use of a safe deposit box, or any other acquisition or disposition of monetary instruments by any means and includes the movement of funds by wire or other electronic means.

"Monetary instruments" means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, cashier's checks, and money orders or (ii) investment securities or other negotiable instruments, in bearer form or otherwise in such form that title passes upon delivery.

"Proceeds" means property acquired or derived, directly or indirectly, from, produced through, realized through, or caused by an act or omission constituting a violation of law and includes property, real or personal, of any kind.

"Property" means anything of value, and includes any interest therein, including any benefit, privilege, claim or right with respect to anything of value whether real or personal, tangible or intangible.

"Specified unlawful activity" means any act or attempted act, committed for financial gain and punishable as a felony under the laws of the Commonwealth or, if committed outside the Commonwealth, punishable by confinement of more than one year under the laws of the state in which the act or attempted act was committed, and involving violations of:

- 1. Any offense contained within Title 4.1 for which punishment as a felony is authorized.*
- 2. Any offense contained within Title 13.1 for which punishment as a felony is authorized.*
- 3. Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2.*
- 4. Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title 18.2.*
- 5. Article 5 (§ 18.2-58 et seq.) of Chapter 4 of Title 18.2.*
- 6. Article 6 (§ 18.2-59 et seq.) of Chapter 4 of Title 18.2.*
- 7. Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2.*
- 8. Chapter 6 (§ 18.2-168 et seq.) of Title 18.2.*
- 9. Chapter 7 (§ 18.2-247 et seq.) of Title 18.2.*
- 10. Article 1 (§ 18.2-325 et seq.) of Chapter 8 of Title 18.2.*
- 11. Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2.*
- 12. Article 3 (§ 18.2-344 et seq.) of Chapter 8 of Title 18.2.*
- 13. Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2.*
- 14. Article 2 (§ 18.2-438 et seq.) of Chapter 10 of Title 18.2.*
- 15. Article 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2.*
- 16. Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of Title 18.2.*
- 17. Chapter 9 (§ 32.1-310 et seq.) of Title 32.1.*
- 18. Any offense contained within Title 58.1 for which punishment as a felony is authorized.*

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§ 18.2-246.3. Money laundering; penalty.

A. It shall be unlawful for any person to conduct or attempt to conduct a financial transaction, knowing that the property involved in the transaction represents the proceeds of a specified unlawful activity, (i) with the intent to promote the conduct of any specified unlawful activity or (ii) with the knowledge that the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the proceeds of the specified unlawful activity or (iii) with the intent to avoid a financial transaction reporting requirement under state or federal law.

B. A violation of subsection A shall be punishable by imprisonment for not more than forty years or a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or by both imprisonment and a fine.

C. For the purpose subsection A, the defendant's knowledge may be established by proof that a law-enforcement officer represented the matters in clause (i), (ii) or (iii) of subsection A as true, and the defendant's actions or statements or other evidence indicate that the defendant believed such representation to be true.

§ 18.2-246.4. Authority of the Attorney General.

With the consent of the attorney for the Commonwealth who is handling an investigation or prosecution under this article, the Attorney General may , participate in the investigation and any resulting prosecution under this article.

§ 18.2-246.5. Seizure of property used in connection with money laundering.

A. The following property shall be subject to lawful seizure by any officer charged with enforcing the provisions of this article: (i) all money, equipment, motor vehicles, and all other personal and real property of any kind or character, used in substantial connection with the laundering of proceeds of a specified unlawful activity in violation of any provision of this article; (ii) all money commingled with such proceeds for the purpose of concealing or disguising the nature of such proceeds; and (iii) all money or other property, real or personal, traceable to the proceeds of a specified unlawful activity, together with any interest or profits derived from the investment of such proceeds or other property.

B. All seizures and forfeitures under this section shall be governed by Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, and the procedures specified therein shall apply, mutatis mutandis, to all forfeitures under this article. Where proceeds forfeitable under this article are traceable to an innocent owner or victim of a specified unlawful activity, said proceeds shall be returned to the innocent owner or victim.

C. Any seizure and forfeiture under this section shall be in addition to any penalty or remedy, civil or criminal, provided by law.

§ 18.2-246.6. Freeze of assets; immunity of financial institution; penalty for violation.

A. Upon the request of the attorney for the Commonwealth of the jurisdiction wherein an offense under § 18.2-246.3 occurred and upon certification by the attorney for the Commonwealth that probable cause exists to believe that an account or safe deposit box contains, in whole or in part, the proceeds of a specified unlawful activity, a bank or other financial institution, wherein the account or safe deposit box is held shall freeze all movement of money into and out of the account or safe deposit box for a period not to exceed ninety days. Notice of the freeze shall be sent by the attorney for the Commonwealth, by certified mail, to all known holders or owners of the account or safe deposit box at the time that the request and certification are made. At any time after the request and certification, any holder or owner may petition the circuit court for release of the freeze and request a hearing on the petition which shall be given precedence on the court's docket. Thereafter, the freeze may be continued or extended only upon order of a circuit court upon a finding of probable cause that the account or safe deposit box contains, in whole or in part, the proceeds of a specified unlawful activity.

B. The owner or holder of an account or safe deposit box frozen under subsection A may be any time petition the circuit court in the jurisdiction wherein the account or safe deposit box is held to lift the freeze. A hearing on such petition shall be held within ten days of the filing of the petition and notice to the prosecutor. The court shall make a determination of whether probable cause exists to believe that the account or safe deposit box contains, in whole or in part, the proceeds of a specified unlawful activity and determine whether the freeze should remain in effect.

C. No bank or other financial institution or any officer or employee of such shall be held liable for complying with a properly requested freeze under subsection A.

D. It shall be unlawful for any bank or other financial institution to refuse to comply with a properly requested freeze under subsection A. Any officer or employee who so refuses shall be guilty of a Class 1 misdemeanor. Any bank or financial institution which refuses to comply with a properly requested freeze under subsection A, and where such refusal results in a loss of funds from the account or safe deposit box for which the freeze was requested, shall be required to reimburse the account or safe deposit box in an amount equal to the amount of funds lost as a result of the refusal.

§ 18.2-246.7. Duplicate reporting by financial institutions of certain currency transactions; criminal penalties.

A. All banks or other financial institutions in the Commonwealth shall be required to file reports

under §§ 5311 through 5313 of Title 31 of the United States Code Annotated, as prescribed by § 103.22 of Title 31 of the Code of Federal Regulations, commonly referred to as the Bank Secrecy Act.

B. All persons engaged in a trade or business, except financial institutions referred to in subsection A, who receive more than \$10,000 in foreign or domestic currency in one transaction, or who receive more than \$10,000 in foreign or domestic currency through two or more related transactions in one business day, shall be required under § 60501 of Title 26 of the United States Code Annotated to file a report concerning such a transaction or transactions, commonly referred to as Form 8300.

C. Any person who knowingly and intentionally fails to comply with the provisions of subsections A and B shall be guilty of a Class 1 misdemeanor.

D. Any person who knowingly and intentionally fails to comply with the provisions of subsections A and B after having previously been convicted of one or more such offenses, shall be guilty of a Class 6 felony.

E. A person shall be guilty of a Class 4 felony if he knowingly and intentionally fails to comply with the provisions of subsections A and B, regardless of the existence of prior convictions, and if he does so:

1. In furtherance of the commission of any other crime under the laws of the Commonwealth; or

2. With regard to transactions within a period of six months totaling more than \$100,000.

§ 18.2-248.6. Forfeiture of business license upon conviction of sale or distribution of imitation controlled substance; money laundering.

Any person, firm or corporation holding a license to operate any business as required by either state or local law shall forfeit such license upon conviction of a violation of (i) § 18.2-248 relating to an imitation controlled substance or (ii) ~~§ 18.2-248.7~~ Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2 relating to money laundering.

2. That § 18.2-248.7 of the Code of Virginia is repealed.

3. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$125,000.