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**HOUSE BILL NO. 361**

Offered January 15, 1998

A BILL to amend and reenact §§ 18.2-248 and 18.2-248.6 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 16.1-278.9:1 and by adding in Chapter 6 of Title 18.2 an article numbered 9, consisting of sections numbered 18.2-246.1 through 18.2-246.6; and to repeal § 18.2-248.7 of the Code of Virginia, relating to drug offenders; drug kingpins; money laundering; penalty.

Patrons—Weatherholtz, Drake, Landes and Sherwood

Referred to Committee for Courts of Justice

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

1. That §§ 18.2-248 and 18.2-248.6 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 16.1-278.9:1 and by adding in Chapter 6 of Title 18.2 an article numbered 9, consisting of sections numbered 18.2-246.1 through 18.2-246.6, as follows:

§ 16.1-278.9:1. Delinquent juveniles; screening and assessment, treatment and probation for drug offenders.

If a juvenile is found to have committed a violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, prior to disposition or sentencing for that violation, the juvenile court or the circuit court shall order that a substance abuse evaluation and assessment be performed by the Department of Juvenile Justice through its court services unit. If a court services unit does not have qualified personnel to perform the evaluation and assessment, the court services unit shall coordinate the evaluation and assessment with a qualified individual or organization that can perform the assessment and evaluation.

Upon completion of the evaluation and assessment, a written report of the results, including an assessment of whether the defendant is amenable to treatment and rehabilitation and a recommendation as to the type of treatment needed, shall be submitted to the court and made available to the attorney for the Commonwealth and the attorney for the juvenile at least seven days prior to the date set for disposition.

**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, 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 Chapter 7 (§ 18.2-247 et seq.) of Title 18.2.

§ 18.2-246.3. Money laundering; penalty.

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

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

69 § 18.2-246.4. Authority of the Attorney General.

70 Upon request of the attorney for the Commonwealth, the Attorney General may assist in or, if so  
71 requested, may initiate or conduct prosecutions pursuant to this article.

72 § 18.2-246.5. Seizure of property used in connection with money laundering.

73 A. The following property shall be subject to lawful seizure by any officer charged with enforcing the  
74 provisions of this article: (i) all money, equipment, motor vehicles, and all other personal and real  
75 property of any kind or character, used in substantial connection with the laundering of proceeds of a  
76 specified unlawful activity in violation of any provision of this article; (ii) all money commingled with  
77 such proceeds for the purpose of concealing or disguising the nature of such proceeds; and (iii) all  
78 money or other property, real or personal, traceable to the proceeds of a specified unlawful activity,  
79 together with any interest or profits derived from the investment of such proceeds or other property.  
80 Real property shall not be subject to seizure unless the minimum prescribed punishment for the specified  
81 unlawful activity is a term of imprisonment of not less than five years.

82 B. All seizures and forfeitures under this section shall be governed by Chapter 22.1 (§ 19.2-386.1 et  
83 seq.) of Title 19.2, and the procedures specified therein shall apply, mutatis mutandis, to all forfeitures  
84 under this article.

85 § 18.2-246.6. Freeze of assets; immunity of financial institution; penalty for violation.

86 A. Upon the request of the attorney for the Commonwealth of the jurisdiction wherein an offense  
87 under § 18.2-246.3 occurred and a finding that probable cause exists to believe that (i) an account or  
88 safe deposit box contains, in whole or in part, the proceeds of a specified unlawful activity and (ii) such  
89 proceeds may be removed from the account or safe deposit box, the circuit court may order a bank or  
90 other financial institution, wherein the account or safe deposit box is held to freeze all movement of  
91 money into and out of the account or safe deposit box for a period not to exceed ninety days. Notice of  
92 the order shall be sent by the attorney for the Commonwealth, by certified mail, to all known holders or  
93 owners of the account or safe deposit box at the time that the order is served upon the financial  
94 institution. At any time after service of the order, any holder or owner may petition the circuit court for  
95 release of the freeze and request a hearing on the petition which shall be given precedence on the  
96 court's docket.

97 The court order requiring the freeze may be continued or extended upon order of the circuit court.

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

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

106 D. Any bank or financial institution which refuses to comply with a properly requested freeze under  
107 subsection A, and where such refusal results in a loss of funds from the account or safe deposit box for  
108 which the freeze was requested, shall be required to reimburse the account or safe deposit box in an  
109 amount equal to the amount of funds lost as a result of the refusal.

110 § 18.2-248. Manufacturing, selling, giving, distributing or possessing with intent to manufacture, sell,  
111 give or distribute a controlled substance or an imitation controlled substance prohibited; penalties.

112 A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it shall be unlawful for any  
113 person to manufacture, sell, give, distribute, or possess with intent to manufacture, sell, give or distribute  
114 a controlled substance or an imitation controlled substance.

115 B. In determining whether any person intends to manufacture, sell, give or distribute an imitation  
116 controlled substance, the court may consider, in addition to all other relevant evidence, whether any  
117 distribution or attempted distribution of such pill, capsule or tablet included an exchange of or a demand  
118 for money or other property as consideration, and, if so, whether the amount of such consideration was  
119 substantially greater than the reasonable value of such pill, capsule or tablet, considering the actual  
120 chemical composition of such pill, capsule or tablet and, where applicable, the price at which  
121 over-the-counter substances of like chemical composition sell.

C. 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 forty years and fined not more than \$500,000. Upon a second or subsequent conviction of such a violation, 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 and be fined not more than \$500,000.

*At any time after conviction pursuant to this subsection and prior to sentencing, the court, with the consent of the defendant, may order the defendant committed to jail and defer sentencing for a period of not more than thirty days for the purpose of a substance abuse assessment and evaluation. In lieu of a court-ordered assessment and evaluation, the defendant may submit a report of an assessment and evaluation performed subsequent to the offense and prior to sentencing. In order to be used as provided in this section, an assessment and evaluation shall be performed by persons skilled in the diagnosis and treatment of substance abuse problems and approved by the court. Not later than seven days prior to the date set for sentencing, the defendant or the person performing the evaluation shall submit a written report of the results to the court, including an assessment of whether the defendant is amenable to treatment and rehabilitation and a recommendation as to the type of treatment needed. A copy of the report shall be made available to the defendant. Sentencing may take place notwithstanding that the written report was not submitted to the court at least seven days prior to the sentencing date.*

D. If such person proves that he gave, distributed or possessed with intent to give or distribute a controlled substance classified in Schedule I or II 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 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, he shall be guilty of a Class 5 felony.

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

F. Any person who violates this section with respect to a controlled substance classified in Schedule III, IV or V or an imitation controlled substance which imitates a controlled substance classified in Schedule III, IV, or V, except for an anabolic steroid classified in Schedule III constituting a violation of § 18.2-248.5, 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 or II 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. "Drug kingpin" means a person who was the principal or one of several principal administrators, organizers or leaders of a continuing criminal enterprise if (i) the enterprise received at least \$500,000/\$250,000 in gross receipts during any twelve-month period of its existence from the manufacture, importation, or distribution of heroin or cocaine or ecgonine or the derivatives, salts, isomers, or salts of isomers thereof 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:

1. ~~100~~ Ten kilograms or more of a mixture or substance containing a detectable amount of heroin;
2. ~~500~~ Fifty 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; or
3. 1.5 kilograms or more of a mixture or substance described in subdivision 2 which contains cocaine base.

Any person who is found to be a drug kingpin shall upon conviction be guilty of a felony punishable by a fine of not more than one million dollars and imprisonment for twenty years to life, twenty years of which shall be a mandatory, minimum sentence which shall be served with no suspension in whole or in part, nor shall anyone convicted hereunder be placed on probation or parole.

I. For purposes of subsection H of this section, a person is engaged in a continuing criminal

enterprise if (i) he violates any provision of this section, the punishment for which is a felony and (ii) such violation is a part of a continuing series of violations of this section which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and from which such person obtains substantial income or resources.

§ 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 this title* 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 \$146,000.**