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HOUSE BILL NO. 1819

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 7, 1999)

(Patron Prior to Substitute—Delegate Blevins)

*A BILL to amend and reenact §§ 18.2-248.1 and 54.1-3401 of the Code of Virginia, relating to definition of and penalties for possession and distribution of marijuana.***Be it enacted by the General Assembly of Virginia:****1. That §§ 18.2-248.1 and 54.1-3401 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-248.1. Penalties for sale, gift, distribution or possession with intent to sell, give or distribute marijuana.

Except as authorized in the Drug Control Act, Chapter 34 of Title 54.1, it shall be unlawful for any person to sell, give, distribute or possess with intent to sell, give or distribute marijuana.

(a) Any person who violates this section with respect to:

(1) Not more than ~~one-half~~ *one* ounce of marijuana is guilty of a Class 1 misdemeanor;(2) More than ~~one-half~~ *one* ounce but not more than ~~five~~ *six* pounds of marijuana is guilty of a Class 5 felony;(3) More than ~~five~~ *six* pounds of marijuana is guilty of a felony punishable by imprisonment of not less than five nor more than thirty years.

If such person proves that he gave, distributed or possessed with intent to give or distribute marijuana only as an accommodation to another individual and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the marijuana to use or become addicted to or dependent upon such marijuana, he shall be guilty of a Class 1 misdemeanor.

(b) Any person who gives, distributes or possesses marijuana as an accommodation and not with intent to profit thereby, to an inmate of a penal institution as defined in § 53-19.18, or in the custody of an employee thereof shall be guilty of a Class 5 felony.

(c) Any person who manufactures marijuana, or possesses marijuana with the intent to manufacture such substance, not for his own use is guilty of a felony punishable by imprisonment of not less than five nor more than thirty years and a fine not to exceed \$10,000.

§ 54.1-3401. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by (i) a practitioner or by his authorized agent and under his direction, or (ii) the patient or research subject at the direction and in the presence of the practitioner.

"Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of drugs or devices.

"Anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth.

"Animal" means any nonhuman animate being endowed with the power of voluntary action.

"Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

"Board" means the Board of Pharmacy.

"Change of ownership" of an existing entity permitted, registered or licensed by the Board means (i) the sale or transfer of all or substantially all of the assets of the entity or of any corporation that owns or controls the entity; (ii) the creation of a partnership by a sole proprietor, the dissolution of a partnership, or change in partnership composition; (iii) the acquisition or disposal of fifty percent or more of the outstanding shares of voting stock of a corporation owning the entity or of the parent corporation of a wholly owned subsidiary owning the entity, except that this shall not apply to any corporation the voting stock of which is actively traded on any securities exchange or in any over-the-counter market; (iv) the merger of a corporation owning the entity or of the parent corporation of a wholly-owned subsidiary owning the entity with another business or corporation; or (v) the expiration or forfeiture of a corporation's charter.

"Compound" means the taking of two or more ingredients and fabricating them into a single preparation, usually referred to as a dosage form.

"Controlled substance" means a drug, substance or immediate precursor in Schedules I through VI of

60 this chapter. The term shall not include distilled spirits, wine, malt beverages, or tobacco as those terms
61 are defined or used in Title 3.1 or Title 4.1.

62 "DEA" means the Drug Enforcement Administration, United States Department of Justice, or its
63 successor agency.

64 "Deliver" or "delivery" means the actual, constructive, or attempted transfer of any item regulated by
65 this chapter, whether or not there exists an agency relationship.

66 "Device" means instruments, apparatus, and contrivances, including their components, parts and
67 accessories, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in
68 man or animals or to affect the structure or any function of the body of man or animals.

69 "Dialysis solution" means either the commercially available, unopened, sterile solutions whose
70 purpose is to be instilled into the peritoneal cavity during the medical procedure known as peritoneal
71 dialysis, or commercially available solutions whose purpose is to be used in the performance of
72 hemodialysis, not to include any solutions administered to the patient intravenously.

73 "Dispense" means to deliver a drug to an ultimate user or research subject by or pursuant to the
74 lawful order of a practitioner, including the prescribing and administering, packaging, labeling or
75 compounding necessary to prepare the substance for that delivery.

76 "Dispenser" means a practitioner who dispenses.

77 "Distribute" means to deliver other than by administering or dispensing a controlled substance.

78 "Distributor" means a person who distributes.

79 "Drug" means (i) articles or substances recognized in the official United States Pharmacopoeia
80 National Formulary or official Homeopathic Pharmacopoeia of the United States, or any supplement to
81 any of them; (ii) articles or substances intended for use in the diagnosis, cure, mitigation, treatment or
82 prevention of disease in man or animals; (iii) articles or substances, other than food, intended to affect
83 the structure or any function of the body of man or animals; or (iv) articles or substances intended for
84 use as a component of any article specified in clause (i), (ii) or (iii). "Drug" does not include devices or
85 their components, parts or accessories.

86 "Hashish oil" means any oily extract containing one or more cannabinoids, but shall not include any
87 such extract with a tetrahydrocannabinol content of less than twelve percent by weight.

88 "Immediate precursor" means a substance which the Board of Pharmacy has found to be and by
89 regulation designates as being the principal compound commonly used or produced primarily for use,
90 and which is an immediate chemical intermediary used or likely to be used in the manufacture of a
91 controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

92 "Label" means a display of written, printed or graphic matter upon the immediate container of any
93 article. A requirement made by or under authority of this chapter that any word, statement or other
94 information appear on the label shall not be considered to be complied with unless such word, statement
95 or other information also appears on the outside container or wrapper, if any, of the retail package of
96 such article, or is easily legible through the outside container or wrapper.

97 "Labeling" means all labels and other written, printed or graphic matter on an article or any of its
98 containers or wrappers, or accompanying such article.

99 "Manufacture" means the production, preparation, propagation, compounding, conversion or
100 processing of any item regulated by this chapter, either directly or indirectly by extraction from
101 substances of natural origin, or independently by means of chemical synthesis, or by a combination of
102 extraction and chemical synthesis, and includes any packaging or repackaging of the substance or
103 labeling or relabeling of its container. This term does not include the preparing, compounding,
104 packaging or labeling of a controlled substance by a practitioner as an incident to his administering or
105 dispensing of a controlled substance or marijuana in the course of his professional practice, or by a
106 practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to,
107 research, teaching, or chemical analysis and not for sale.

108 "Manufacturer" means every person who manufactures.

109 "Marijuana" means any part of a plant of the genus Cannabis whether growing or not, its seeds or
110 resin; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds,
111 or its resin. Marijuana shall not include any oily extract containing one or more cannabinoids unless
112 such extract contains less than twelve percent of tetrahydrocannabinol by weight, or the ~~mature stalks of~~
113 ~~such plant~~, fiber produced from such stalk, oil or cake made from the seeds of such plant, any other
114 compound, manufacture, salt, derivative, mixture or preparation of such mature stalks, fiber, oil, or cake,
115 ~~or the sterilized seed of such plant which is incapable of germination.~~

116 "Medical equipment supplier" means any person, as defined in § 1-13.19, engaged in the delivery to
117 the ultimate consumer, pursuant to the lawful order of a practitioner, of hypodermic syringes and
118 needles, medicinal oxygen, Schedule VI controlled devices, those Schedule VI controlled substances with
119 no medicinal properties which are used for the operation and cleaning of medical equipment and
120 solutions for peritoneal dialysis.

121 "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction

from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (i) opium, opiates, and any salt, compound, derivative, or preparation of opium or opiates; (ii) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (i), but not including the isoquinoline alkaloids of opium; (iii) opium poppy and poppy straw; (iv) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extraction of coca leaves which do not contain cocaine or ecgonine.

"New drug" means: (i) any drug, except a new animal drug or an animal feed bearing or containing a new animal drug, the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling, except that such a drug not so recognized shall not be deemed to be a "new drug" if at any time prior to the enactment of this chapter it was subject to the Food and Drugs Act of June 30, 1906, as amended, and if at such time its labeling contained the same representations concerning the conditions of its use; or (ii) any drug, except a new animal drug or an animal feed bearing or containing a new animal drug, the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

"Official compendium" means the official United States Pharmacopoeia National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to any of them.

"Official written order" means an order written on a form provided for that purpose by the United States Drug Enforcement Administration, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law, and if no such order form is provided then on an official form provided for that purpose by the Board of Pharmacy.

"Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Article 4 (§ 54.1-3437 et seq.) of this chapter, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

"Opium poppy" means the plant of the species *Papaver somniferum* L., except the seeds thereof.

"Original package" means the unbroken container or wrapping in which any drug or medicine is enclosed together with label and labeling, put up by or for the manufacturer, wholesaler, or distributor for use in the delivery or display of such article.

"Person" means both the plural and singular, as the case demands, and includes an individual, partnership, corporation, association, governmental agency, trust, or other institution or entity.

"Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

"Practitioner" means a physician, dentist, licensed nurse practitioner pursuant to § 54.1-2957.01, licensed physician assistant pursuant to § 54.1-2952.1, pharmacist pursuant to § 54.1-3300, TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of this title, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, prescribe and administer, or conduct research with respect to, a controlled substance in the course of professional practice or research in this Commonwealth.

"Prescriber" means a practitioner who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 to issue a prescription.

"Prescription" means an order for drugs or medical supplies, written or signed or transmitted by word of mouth, telephone, telegraph or other means of communication to a pharmacist by a duly licensed physician, dentist, veterinarian or other practitioner, authorized by law to prescribe and administer such drugs or medical supplies.

"Prescription drug" means any drug required by federal law or regulation to be dispensed only pursuant to a prescription, including finished dosage forms and active ingredients subject to § 503 (b) of the federal Food, Drug, and Cosmetic Act.

"Production" or "produce" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance or marijuana.

"Proprietary medicine" means a completely compounded nonprescription drug in its unbroken, original package which does not contain any controlled substance or marijuana as defined in this chapter and is not in itself poisonous, and which is sold, offered, promoted or advertised directly to the general public by or under the authority of the manufacturer or primary distributor, under a trademark, trade

183 name or other trade symbol privately owned, and the labeling of which conforms to the requirements of
184 this chapter and applicable federal law. However, this definition shall not include a drug which is only
185 advertised or promoted professionally to licensed practitioners, a narcotic or drug containing a narcotic,
186 a drug which may be dispensed only upon prescription or the label of which bears substantially the
187 statement "Warning - may be habit-forming," or a drug intended for injection.

188 "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any
189 person, whether as individual, proprietor, agent, servant or employee.

190 "Warehouser" means any person, other than a wholesale distributor, engaged in the business of
191 selling or otherwise distributing prescription drugs or devices to any person who is not the ultimate user
192 or consumer. No person shall be subject to any state or local tax by reason of this definition.

193 "Wholesale distribution" means distribution of prescription drugs to persons other than consumers or
194 patients, subject to the exceptions set forth in § 54.1-3401.1.

195 "Wholesale distributor" means any person engaged in wholesale distribution of prescription drugs
196 including, but not limited to, manufacturers; repackers; own-label distributors; private-label distributors;
197 jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug
198 warehouses conducting wholesale distributions, and wholesale drug warehouses; independent wholesale
199 drug traders; and retail pharmacies conducting wholesale distributions. No person shall be subject to any
200 state or local tax as a wholesale merchant by reason of this definition.

201 The words "drugs" and "devices" as used in Chapter 33 (§ 54.1-3300 et seq.) of this title and in this
202 chapter shall not include surgical or dental instruments, physical therapy equipment, X-ray apparatus or
203 glasses or lenses for the eyes.

204 The terms "pharmacist," "pharmacy" and "practice of pharmacy" as used in this chapter shall be
205 defined as provided in Chapter 33 of this title unless the context requires a different meaning.

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