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HOUSE BILL NO. 1896

Offered January 15, 1999

A BILL to amend and reenact §§ 18.2-247 and 18.2-248 of the Code of Virginia, relating to controlled substances; penalty.

Patrons—Blevins, Davis, Drake, Harris, McQuigg, Nixon, Spruill and Wagner

Consent to introduce

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-247 and 18.2-248 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-247. Use of terms "controlled substances," "marijuana," "Schedules I, II, III, IV, V and VI" and "imitation controlled substance" in Title 18.2.

A. Wherever the terms "controlled substances," "marijuana" and "Schedules I, II, III, IV, V and VI" are used in Title 18.2, such terms refer to those terms as they are used or defined in the Drug Control Act, Chapter 34 of Title 54.1.

B. The term "imitation controlled substance" when used in this article means a pill, capsule, tablet, or substance in any form whatsoever which is not a controlled substance subject to abuse, and:

1. Which by overall dosage unit appearance, including color, shape, size, marking and packaging or by representations made, would cause the likelihood that such a pill, capsule, ~~or~~ tablet, *or substance in any other form whatsoever* will be mistaken for a controlled substance unless such substance was introduced into commerce prior to the initial introduction into commerce of the controlled substance which it is alleged to imitate; or

2. Which by express or implied representations purports to act like a controlled substance as a stimulant or depressant of the central nervous system and which is not commonly used or recognized for use in that particular formulation for any purpose other than for such stimulant or depressant effect, unless marketed, promoted, or sold as permitted by the United States Food and Drug Administration.

C. In determining whether a pill, capsule, tablet, or substance in any other form whatsoever, is an "imitation controlled substance," there shall be considered, in addition to all other relevant factors, comparisons with accepted methods of marketing for legitimate nonprescription drugs for medicinal purposes rather than for drug abuse or any similar nonmedicinal use, including consideration of the packaging of the drug and its appearance in overall finished dosage form, promotional materials or representations, oral or written, concerning the drug, and the methods of distribution of the drug and where and how it is sold to the public.

§ 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 ~~or~~ , 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 ~~or~~ , tablet *or substance in any other form whatsoever*, considering the actual chemical composition of such pill, capsule ~~or~~ , 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. 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.

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

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60 the controlled substance to use or become addicted to or dependent upon such controlled substance, he
61 shall be guilty of a Class 5 felony.

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

70 F. Any person who violates this section with respect to a controlled substance classified in Schedule
71 III, IV or V or an imitation controlled substance which imitates a controlled substance classified in
72 Schedule III, IV, or V, except for an anabolic steroid classified in Schedule III constituting a violation
73 of § 18.2-248.5, shall be guilty of a Class 1 misdemeanor.

74 G. Any person who violates this section with respect to an imitation controlled substance which
75 imitates a controlled substance classified in Schedule I or II shall be guilty of a Class 6 felony. In any
76 prosecution brought under this subsection, it is not a defense to a violation of this subsection that the
77 defendant believed the imitation controlled substance to actually be a controlled substance.

78 H. "Drug kingpin" means a person who was the principal or one of several principal administrators,
79 organizers or leaders of a continuing criminal enterprise if (i) the enterprise received at least \$500,000 in
80 gross receipts during any twelve-month period of its existence from the manufacture, importation, or
81 distribution of heroin or cocaine or ecgonine or the derivatives, salts, isomers, or salts of isomers thereof
82 or (ii) the person engaged in the enterprise to manufacture, sell, give, distribute or possess with the
83 intent to manufacture, sell, give or distribute the following:

- 84 1. 100 kilograms or more of a mixture or substance containing a detectable amount of heroin;
- 85 2. 500 kilograms or more of a mixture or substance containing a detectable amount of:
 - 86 a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and
87 derivatives of ecgonine or their salts have been removed;
 - 88 b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - 89 c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
 - 90 d. Any compound, mixture, or preparation which contains any quantity of any of the substances
91 referred to in subdivisions a through c; or
- 92 3. 1.5 kilograms or more of a mixture or substance described in subdivision 2 which contains
93 cocaine base.

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

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

104 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
105 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
106 **is \$0.**