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HOUSE BILL NO. 1896
FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by Senator Mims
 on February 23, 1999)

(Patron Prior to Substitute—Delegate Blevins)

A BILL to amend and reenact §§ 18.2-247, 18.2-248 and 54.1-3446 of the Code of Virginia, relating to controlled substances; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-247, 18.2-248 and 54.1-3446 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 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

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

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

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

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

- 81 1. 100 kilograms or more of a mixture or substance containing a detectable amount of heroin;
- 82 2. 500 kilograms or more of a mixture or substance containing a detectable amount of:
 - 83 a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and
84 derivatives of ecgonine or their salts have been removed;
 - 85 b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - 86 c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
 - 87 d. Any compound, mixture, or preparation which contains any quantity of any of the substances
88 referred to in subdivisions a through c; or
- 89 3. 1.5 kilograms or more of a mixture or substance described in subdivision 2 which contains
90 cocaine base.

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

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

101 § 54.1-3446. Schedule I.

102 The controlled substances listed in this section are included in Schedule I:

103 1. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers,
104 esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers
105 and salts is possible within the specific chemical designation:

- 106 Acetylmethadol;
- 107 Allylprodine;
- 108 Alphamethylfentanyl;
- 109 Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol,
110 levomethadyl acetate, or LAAM);
- 111 Alphameprodine;
- 112 Alphamethadol;
- 113 Benzethidine;
- 114 Betacetylmethadol;
- 115 Betameprodine;
- 116 Betamethadol;
- 117 Betaprodine;
- 118 Clonitazene;
- 119 Dextromoramide;
- 120 Diampromide;
- 121 Diethylthiambutene;

122 Difenoxin;
 123 Dimenoxadol;
 124 Dimepheptanol;
 125 Dimethylthiambutene;
 126 Dioxaphetylbutyrate;
 127 Dipipanone;
 128 Ethylmethylthiambutene;
 129 Etonitazene;
 130 Etoxidine;
 131 Furethidine;
 132 Hydroxypethidine;
 133 Ketobemidone;
 134 Levomoramide;
 135 Levophenacymorphan;
 136 Morpheridine;
 137 Noracymethadol;
 138 Norlevorphanol;
 139 Normethadone;
 140 Norpipanone;
 141 Phenadoxone;
 142 Phenampromide;
 143 Phenomorphan;
 144 Phenoperidine;
 145 Piritramide;
 146 Proheptazine;
 147 Properidine;
 148 Propiram;
 149 Racemoramide;
 150 Trimeperidine.

151 2. Any of the following opium derivatives, their salts, isomers and salts of isomers, unless
 152 specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible
 153 within the specific chemical designation:

154 Acetorphine;
 155 Acetyldihydrocodeine;
 156 Benzylmorphine;
 157 Codeine methylbromide;
 158 Codeine-N-Oxide;
 159 Cyprenorphine;
 160 Desomorphine;
 161 Dihydromorphine;
 162 Drotebanol;
 163 Etorphine;
 164 Heroin;
 165 Hydromorphanol;
 166 Methyldesorphine;
 167 Methyldihydromorphine;
 168 Morphine methylbromide;
 169 Morphine methylsulfonate;
 170 Morphine-N-Oxide;
 171 Myorphine;
 172 Nicocodeine;
 173 Nicomorphine;
 174 Normorphine;
 175 Phoclodine;
 176 Thebacon.

177 3. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture,
 178 or preparation, which contains any quantity of the following hallucinogenic substances, or which
 179 contains any of its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers,
 180 and salts of isomers is possible within the specific chemical designation (for purposes of this subdivision
 181 only, the term "isomer" includes the optical, position, and geometric isomers):

182 Alpha-ethyltryptamine (some trade or other names: Monase;a-ethyl-1H-indole-3-ethanamine;

- 183 3-[2-aminobutyl] indole; a-ET; AET);
 184 4 - Bromo - 2,5 - dimethoxyphenethylamine (some trade or other names:
 185 2-[4-bromo-2,5-dimethoxyphenyl]-1-aminoethane;alpha-desmethyl DOB;2C-B; Nexus);
 186 3,4-methylenedioxy amphetamine;
 187 5-methoxy-3,4-methylenedioxy amphetamine;
 188 3,4,5-trimethoxy amphetamine;
 189 Bufotenine;
 190 Diethyltryptamine;
 191 Dimethyltryptamine;
 192 4-methyl-2,5-dimethoxyamphetamine;
 193 2,5-dimethoxy-4-ethylamphetamine (DOET);
 194 Ibogaine;
 195 Lysergic acid diethylamide;
 196 Mescaline;
 197 Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6,
 198 9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl);
 199 Peyote;
 200 N-ethyl-3-piperidyl benzilate;
 201 N-methyl-3-piperidyl benzilate;
 202 Psilocybin;
 203 Psilocyn;
 204 Tetrahydrocannabinols, except as present in marijuana and dronabinol in sesame oil and encapsulated
 205 in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration;
 206 Hashish oil (some trade or other names: hash oil; liquid marijuana; liquid hashish);
 207 2,5-dimethoxyamphetamine (some trade or other names: 2,5-dimethoxy-a-methylphenethylamine;
 208 2,5-DMA);
 209 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts
 210 and salts of isomers;
 211 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4
 212 (methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA);
 213 4 - bromo - 2,5 - dimethoxyamphetamine (some trade or other names:
 214 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA);
 215 4-methoxyamphetamine (some trade or other names: 4-methoxy-a-methylphenethylamine;
 216 paramethoxyamphetamine; PMA);
 217 N-ethyl analog of phencyclidine;
 218 Pyrrolidine analog of phencyclidine;
 219 Thiophene analog of phencyclidine.
 220 4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture
 221 or preparation which contains any quantity of the following substances having a depressant effect on the
 222 central nervous system, including its salts, isomers and salts of isomers whenever the existence of such
 223 salts, isomers and salts of isomers is possible within the specific chemical designation:
 224 Mecloqualone;
 225 Methaqualone.
 226 5. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture
 227 or preparation which contains any quantity of the following substances having a stimulant effect on the
 228 central nervous system, including its salts, isomers and salts of isomers:
 229 Aminorex (some trade or other names; aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,
 230 5-dihydro-5-phenyl-2-oxazolamine);
 231 Fenethylamine;
 232 Ethylamphetamine;
 233 Cathinone (some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone,
 234 2-aminopropiophenone, ~~and~~ norephedrone, *and any plant material from which Cathinone may be*
 235 *derived*);
 236 Methcathinone (some other names: 2-(methylamino)-propionophenone; alpha-(methylamino)
 237 propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone;
 238 monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and UR
 239 1432).
 240 6. Any material, compound, mixture or preparation containing any quantity of the following
 241 substances:
 242 3-methylfentanyl-(N-[3-methyl -1- (2-phenylethyl) -4- piperidyl] N-phenylpropanamide), its optical and
 243 geometric isomers, salts, and salts of isomers;
 244 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts

245 and salts of isomers;
 246 1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine (PEPAP), its optical isomers, salts and salts of
 247 isomers;
 248 N-[1-(1-methyl-2-phenyl)ethyl-4-piperidyl]-N-phenylacetamide (acetyl-alpha-methylfentanyl), its
 249 optical isomers, salts and salts of isomers;
 250 N-[1-(1-methyl-2-2-thienyl)ethyl-4 piperidyl]-N-phenylpropanamide (alpha-methylthiofentanyl), its
 251 optical isomers, salts and salts of isomers;
 252 N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts and salts of
 253 isomers;
 254 N-[1-(2-hydroxy-2-phenyl) ethyl-4-piperidyl]-N-phenylpropanamide (beta-hydroxyfentanyl), its optical
 255 isomers, salts and salts of isomers;
 256 N-[3-methyl-1-(2-hydroxy-2-phenyl)ethyl-4-piperidyl]-N-phenylpropanamide
 257 (beta-hydroxy-3-methylfentanyl), its optical and geometric isomers, salts and salts of isomers;
 258 N-[3-methyl-1-(2-2-thienyl)ethyl-4-piperidyl]-N-phenylpropanamide (3-methylthiofentanyl), its optical
 259 and geometric isomers, salts and salts of isomers;
 260 N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide(thenylfentanyl), its optical isomers, salts
 261 and salts of isomers;
 262 N-[1-(2-2-thienyl)ethyl-4-piperidyl]-N-phenylpropanimide(thiofentanyl), its optical isomers, salts and
 263 salts of isomers.
 264 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
 265 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
 266 **is \$0.**