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## SENATE BILL NO. 880

Offered January 13, 1999

A *BILL to amend and reenact § 18.2-248 of the Code of Virginia, relating to distribution of drugs; penalty.*

Patrons—Hawkins; Delegate: Clement

Referred to Committee for Courts of Justice

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

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

§ 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 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, considering the actual chemical composition of such pill, capsule or tablet 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, *including convictions or adjudications of delinquency as a juvenile*, 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 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 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 kilograms or more of a mixture or substance containing a detectable amount of heroin;

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60 2. 500 kilograms or more of a mixture or substance containing a detectable amount of:  
61 a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and  
62 derivatives of ecgonine or their salts have been removed;  
63 b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;  
64 c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or  
65 d. Any compound, mixture, or preparation which contains any quantity of any of the substances  
66 referred to in subdivisions a through c; or  
67 3. 1.5 kilograms or more of a mixture or substance described in subdivision 2 which contains  
68 cocaine base.  
69 Any person who is found to be a drug kingpin shall upon conviction be guilty of a felony punishable  
70 by a fine of not more than one million dollars and imprisonment for twenty years to life, twenty years  
71 of which shall be a mandatory, minimum sentence which shall be served with no suspension in whole or  
72 in part, nor shall anyone convicted hereunder be placed on probation or parole.  
73 I. For purposes of subsection H of this section, a person is engaged in a continuing criminal  
74 enterprise if (i) he violates any provision of this section, the punishment for which is a felony and (ii)  
75 such violation is a part of a continuing series of violations of this section which are undertaken by such  
76 person in concert with five or more other persons with respect to whom such person occupies a position  
77 of organizer, a supervisory position, or any other position of management, and from which such person  
78 obtains substantial income or resources.  
79 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**  
80 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**  
81 **is \$ 492,750 in FY 2006.**