

24105678D

SENATE BILL NO. 469

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 17, 2024)

(Patron Prior to Substitute—Senator Obenshain)

A BILL to amend and reenact §§ 18.2-248.02 and 54.1-3458 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-248.05, relating to controlled substances; manufacturing, selling, giving, distributing, etc.; adulterated or misbranded drugs; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-248.02 and 54.1-3458 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-248.05 as follows:

§ 18.2-248.02. Allowing a minor or incapacitated person to be present during manufacture or attempted manufacture of methamphetamine or fentanyl prohibited; penalties.

Any person 18 years of age or older who knowingly allows (i) a minor under the age of 15, (ii) a minor 15 years of age or older with whom he maintains a custodial relationship, including but not limited to as a parent, step-parent, grandparent, step-grandparent, or who stands in loco parentis with respect to such minor, or (iii) a mentally incapacitated or physically helpless person of any age, to be present in the same dwelling, apartment as defined by § 55.1-2000, unit of a hotel as defined in § 35.1-1, garage, shed, or vehicle during the manufacture or attempted manufacture of methamphetamine as prohibited by subsection C1 of § 18.2-248 *or any substance containing a detectable amount of fentanyl, including its derivatives, isomers, esters, ethers, salts, and salts of isomers*, is guilty of a felony punishable by imprisonment for not less than 10 nor more than 40 years. This penalty shall be in addition to and served consecutively with any other sentence.

§ 18.2-248.05. Prohibited equipment related to manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance; penalties.

A. For the purposes of this section:

"Encapsulating machine" means manual, semiautomatic, or fully automatic equipment that can be used to fill shells or capsules with powdered or granular solids or semisolid material to produce coherent solid contents.

"Tableting machine" means manual, semiautomatic, or fully automatic equipment that can be used to compact, compress, or mold powdered or granular solids or semisolid material to produce fused coherent solid tablets.

B. Except for manufacturers permitted pursuant to the Drug Control Act (§ 54.1-3400 et seq.), it is unlawful for any person to possess, purchase, sell, give, distribute, or possess with intent to sell, give, or distribute an encapsulating machine or a tableting machine that manufactures, compounds, converts, produces, processes, prepares, or otherwise introduces into the human body a controlled substance. Any person who violates this section is guilty of a Class 6 felony. However, any person who violates this section knowing, intending, or having reasonable cause to believe that such action will result in the unlawful manufacture of a controlled substance or counterfeit controlled substance that contains (i) a controlled substance classified in Schedule I or Schedule II of the Drug Control Act or (ii) a controlled substance analog as defined in § 54.1-3456 is guilty of a Class 5 felony.

§ 54.1-3458. Violations.

A. Any person who violates any of the provisions of § 54.1-3457 shall be guilty of a Class 2 misdemeanor or 6 felony.

B. No person shall be subject to the penalties of this section for having violated subdivisions 1 and 3 of § 54.1-3457 if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in this Commonwealth from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this chapter.

C. No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section for the dissemination of such false advertisement, unless he has refused, on the request of the Board, to furnish the Board the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in this Commonwealth who caused him to disseminate such advertisement.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of

60 \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary
61 appropriation cannot be determined for periods of commitment to the custody of the Department
62 of Juvenile Justice.