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SENATE BILL NO. 775

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 29, 1997)

(Patron Prior to Substitute—Senator Stolle)

A BILL to amend and reenact § 18.2-248.6 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 6 of Title 18.2 an article numbered 9, consisting of sections numbered 18.2-246.1 through 18.2-246.7; and to repeal § 18.2-248.7, relating to money laundering; penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-248.6 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 6 of Title 18.2 an article numbered 9, consisting of sections numbered 18.2-246.1 through 18.2-246.7, as follows:

Article 9.

Virginia Comprehensive Money Laundering Act.

§ 18.2-246.1. Title.

This article shall be known and may be cited as the "Virginia Comprehensive Money Laundering Act."

§ 18.2-246.2. Definitions:

"Conduct" or "conducts" includes initiating, concluding, or participating in initiating or concluding, or assisting in or facilitating a transaction.

"Financial transaction" means any purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, purchase or sale of monetary instruments, use of a safe deposit box, or any other acquisition or disposition of monetary instruments by any means and includes the movement of funds by wire or other electronic means.

"Monetary instruments" means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, cashier's checks, and money orders or (ii) investment securities or other negotiable instruments, in bearer form or otherwise in such form that title passes upon delivery.

"Proceeds" means property acquired or derived, directly or indirectly, from, produced through, realized through, or caused by an act or omission constituting a violation of law and includes property, real or personal, of any kind.

"Property" means anything of value, and includes any interest therein, including any benefit, privilege, claim or right with respect to anything of value whether real or personal, tangible or intangible.

"Specified unlawful activity" means any act or attempted act, committed for financial gain and punishable as a felony under the laws of the Commonwealth or, if committed outside the Commonwealth, punishable by confinement of more than one year under the laws of the state in which the act or attempted act was committed, and involving violations of:

1. Title 4.1 for which punishment as a felony is authorized.
2. Title 13.1 for which punishment as a felony is authorized.
3. Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2.
4. Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title 18.2.
5. Article 5 (§ 18.2-58 et seq.) of Chapter 4 of Title 18.2.
6. Article 6 (§ 18.2-59 et seq.) of Chapter 4 of Title 18.2.
7. Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2.
8. Chapter 6 (§ 18.2-168 et seq.) of Title 18.2.
9. Chapter 7 (§ 18.2-247 et seq.) of Title 18.2.
10. Article 1 (§ 18.2-325 et seq.) of Chapter 8 of Title 18.2.
11. Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2.
12. Article 3 (§ 18.2-344 et seq.) of Chapter 8 of Title 18.2.
13. Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2.
14. Article 2 (§ 18.2-438 et seq.) of Chapter 10 of Title 18.2.
15. Article 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2.
16. Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of Title 18.2.
17. Chapter 9 (§ 32.1-310 et seq.) of Title 32.1.
18. Any offense contained within Title 58.1 for which punishment as a felony is authorized.

§ 18.2-246.3. Money laundering; penalty.

A. It shall be unlawful for any person to conduct or attempt to conduct a financial transaction,

60 knowing that the property involved in the transaction represents the proceeds of a specified unlawful
61 activity, (i) with the intent to promote the conduct of any specified unlawful activity or (ii) with the
62 knowledge that the transaction is designed in whole or in part to conceal or disguise the nature,
63 location, source, ownership or control of the proceeds of the specified unlawful activity or (iii) with the
64 intent to avoid a financial transaction reporting requirement under state or federal law.

65 B. A violation of subsection A shall be punishable by imprisonment for not more than forty years or
66 a fine of not more than \$500,000 or twice the value of the property involved in the transaction,
67 whichever is greater, or by both imprisonment and a fine.

68 § 18.2-246.4. Authority of the Attorney General.

69 Upon request of the attorney for the Commonwealth, the Attorney General may assist in or, if so
70 requested, may initiate or conduct prosecutions pursuant to this article.

71 § 18.2-246.5. Seizure of property used in connection with money laundering.

72 A. The following property shall be subject to lawful seizure by any officer charged with enforcing the
73 provisions of this article: (i) all money, equipment, motor vehicles, and all other personal and real
74 property of any kind or character, used in substantial connection with the laundering of proceeds of a
75 specified unlawful activity in violation of any provision of this article; (ii) all money commingled with
76 such proceeds for the purpose of concealing or disguising the nature of such proceeds; and (iii) all
77 money or other property, real or personal, traceable to the proceeds of a specified unlawful activity,
78 together with any interest or profits derived from the investment of such proceeds or other property.

79 B. All seizures and forfeitures under this section shall be governed by Chapter 22.1 (§ 19.2-386.1 et
80 seq.) of Title 19.2, and the procedures specified therein shall apply, mutatis mutandis, to all forfeitures
81 under this article.

82 § 18.2-246.6. Freeze of assets; immunity of financial institution; penalty for violation.

83 A. Upon the request of the attorney for the Commonwealth of the jurisdiction wherein an offense
84 under § 18.2-246.3 occurred and a finding that probable cause exists to believe that an account or safe
85 deposit box contains, in whole or in part, the proceeds of a specified unlawful activity, the circuit court
86 may order a bank or other financial institution, wherein the account or safe deposit box is held to
87 freeze all movement of money into and out of the account or safe deposit box for a period not to exceed
88 ninety days. Notice of the order shall be sent by the attorney for the Commonwealth, by certified mail,
89 to all known holders or owners of the account or safe deposit box at the time that the order is served
90 upon the financial institution. At any time after service of the order, any holder or owner may petition
91 the circuit court for release of the freeze and request a hearing on the petition which shall be given
92 precedence on the court's docket.

93 The court order requiring the freeze may be continued or extended upon order of the circuit court.

94 B. The owner or holder of an account or safe deposit box frozen under subsection A may at any time
95 petition the circuit court in the jurisdiction wherein the account or safe deposit box is held to lift the
96 freeze. A hearing on such petition shall be held within ten days of the filing of the petition and notice to
97 the attorney for the Commonwealth. The court shall make a determination of whether probable cause
98 exists to believe that the account or safe deposit box contains, in whole or in part, the proceeds of a
99 specified unlawful activity and determine whether the freeze should remain in effect.

100 C. No bank or other financial institution or any officer or employee of such shall be held liable for
101 complying with a properly requested freeze under subsection A.

102 D. Any bank or financial institution which refuses to comply with a properly requested freeze under
103 subsection A, and where such refusal results in a loss of funds from the account or safe deposit box for
104 which the freeze was requested, shall be required to reimburse the account or safe deposit box in an
105 amount equal to the amount of funds lost as a result of the refusal.

106 § 18.2-246.7. Duplicate reporting by financial institutions of certain currency transactions; criminal
107 penalties.

108 A. All banks or other financial institutions in the Commonwealth shall be required to file reports
109 under §§ 5311 through 5313 of Title 31 of the United States Code Annotated, as prescribed by § 103.22
110 of Title 31 of the Code of Federal Regulations, commonly referred to as the Bank Secrecy Act.

111 B. All persons engaged in a trade or business, except financial institutions referred to in subsection
112 A, who receive more than \$10,000 in foreign or domestic currency in one transaction, or who receive
113 more than \$10,000 in foreign or domestic currency through two or more related transactions in one
114 business day, shall be required under § 60501 of Title 26 of the United States Code Annotated to file a
115 report concerning such a transaction or transactions, commonly referred to as Form 8300.

116 C. Any person who knowingly and intentionally fails to comply with the provisions of subsection A or
117 B shall be guilty of a Class 1 misdemeanor.

118 D. Any person who knowingly and intentionally fails to comply with the provisions of subsection A
119 or B after having previously been convicted of one or more such offenses, shall be guilty of a Class 6
120 felony.

121 E. A person shall be guilty of a Class 6 felony if he knowingly and intentionally fails to comply with

122 *the provisions of subsection A or B, regardless of the existence of prior convictions, and if he does so:*
123 *1. In furtherance of the commission of any other crime under the laws of the Commonwealth; or*
124 *2. With regard to transactions within a period of six months totaling more than \$100,000.*
125 *§ 18.2-248.6. Forfeiture of business license upon conviction of sale or distribution of imitation*
126 *controlled substance; money laundering.*
127 *Any person, firm or corporation holding a license to operate any business as required by either state*
128 *or local law shall forfeit such license upon conviction of a violation of (i) § 18.2-248 relating to an*
129 *imitation controlled substance or (ii) ~~§ 18.2-248.7~~ Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of this*
130 *title relating to money laundering.*
131 **2. That § 18.2-248.7 of the Code of Virginia is repealed.**
132 **3. That the provisions of this act may result in a net increase in periods of imprisonment in state**
133 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
134 **is \$125,000.**