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SENATE BILL NO. 215

Offered January 14, 1998

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 18.2-246.6; and to repeal § 18.2-248.7, relating to money laundering; penalty.

Patron—Stolle

Referred to the Committee for Courts of Justice

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 18.2-246.6, 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 Chapter 7 (§ 18.2-247 et seq.) of Title 18.2.

§ 18.2-246.3. Money laundering; penalty.

A. It shall be unlawful for any person to conduct or attempt to conduct a financial transaction, knowing that the property involved in the transaction represents the proceeds of a specified unlawful activity, (i) with the intent to promote the conduct of any specified unlawful activity; (ii) with the knowledge that the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the proceeds of the specified unlawful activity; or (iii) with the intent to avoid a financial transaction reporting requirement under federal law.

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

§ 18.2-246.4. Authority of the Attorney General.

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

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

A. The following property shall be subject to lawful seizure by any officer charged with enforcing the provisions of this article: (i) all money, equipment, motor vehicles, and all other personal and real property of any kind or character, used in substantial connection with the laundering of proceeds of a

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60 specified unlawful activity in violation of any provision of this article; (ii) all money commingled with
61 such proceeds for the purpose of concealing or disguising the nature of such proceeds; and (iii) all
62 money or other property, real or personal, traceable to the proceeds of a specified unlawful activity,
63 together with any interest or profits derived from the investment of such proceeds or other property.
64 Real property shall not be subject to seizure unless the minimum prescribed punishment for the specified
65 unlawful activity is a term of imprisonment of not less than five years.

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

69 § 18.2-246.6. Freeze of assets; immunity of financial institution; penalty for violation.

70 A. Upon the request of the attorney for the Commonwealth of the jurisdiction wherein an offense
71 under § 18.2-246.3 occurred and a finding that (i) probable cause exists to believe that an account or
72 safe deposit box contains, in whole or in part, the proceeds of a specified unlawful activity and (ii) such
73 proceeds may be removed from the account or safe deposit box, the circuit court may order a bank or
74 other financial institution, wherein the account or safe deposit box is held, to freeze all movement of
75 money into and out of the account or safe deposit box for a period not to exceed ninety days. Notice of
76 the order shall be sent by the attorney for the Commonwealth, by certified mail, to all known holders or
77 owners of the account or safe deposit box at the time that the order is served upon the financial
78 institution. At any time after service of the order, any holder or owner may petition the circuit court for
79 release of the freeze and request a hearing on the petition which shall be given precedence on the
80 court's docket.

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

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

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

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

94 § 18.2-248.6. Forfeiture of business license upon conviction of sale or distribution of imitation
95 controlled substance; money laundering.

96 Any person, firm or corporation holding a license to operate any business as required by either state
97 or local law shall forfeit such license upon conviction of a violation of (i) § 18.2-248 relating to an
98 imitation controlled substance or (ii) ~~§ 18.2-248.7~~ Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of this
99 title relating to money laundering.

100 2. That § 18.2-248.7 of the Code of Virginia is repealed.

101 3. That the provisions of this act may result in a net increase in periods of imprisonment in state
102 correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation
103 is \$0.