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SENATE BILL NO. 1135

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice)

(Patron Prior to Substitute—Senator Norment)

Senate Amendments in [] — January 30, 2003

A BILL to amend and reenact §§ 18.2-246.2 and 18.2-246.4 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-10.1, relating to money laundering.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-246.2 and 18.2-246.4 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 19.2-10.1 as follows:

§ 18.2-246.2. Definitions.

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

"Financial transaction" means any purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, transportation, 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 including the movement of funds by wire or other electronic means, which is knowingly designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the property involved in the transaction.

"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, *credit cards*, *debit cards*, and money orders or (ii) securities or other negotiable instruments, in bearer form or otherwise.

"Person" includes any individual, partnership, association, corporation or joint venture.

"Proceeds" means property acquired or derived, directly or indirectly, from, produced through, realized through, or caused by an act or omission 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.

§ 18.2-246.4. Seizure of property used in connection with money laundering.

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 some form of activity punishable as a felony under the laws of the Commonwealth, *another state or territory of the United States, the District of Columbia, or the United States*, and (ii) all money or other property, real or personal, traceable to the proceeds of some form of activity punishable as a felony under the laws of the Commonwealth, *another state or territory of the United States, the District of Columbia, or the United States*, together with any interest or profits derived from the investment of such proceeds or other property. Real property shall not be subject to seizure unless the minimum prescribed punishment for the violation under this article is a term of imprisonment of not less than five years. All seizures and forfeitures under this section shall be governed by Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, and the procedures specified therein shall apply, mutatis mutandis, to all forfeitures under this article.

§ 19.2-10.1. *Subpoena duces tecum for obtaining records concerning banking and credit cards.*

A. A financial institution as defined in § 6.1-125.1 or a credit card issuer as defined in § 11-30 shall disclose a record or other information pertaining to a customer, to a law-enforcement officer pursuant to a subpoena duces tecum issued pursuant to this section.

1. In order to obtain such records, the law-enforcement official shall provide a statement of the facts documenting the reasons that the records or other information sought are relevant to a legitimate law-enforcement inquiry, relating to a named person or persons, to the attorney for the Commonwealth. A court shall issue a subpoena duces tecum upon motion of the Commonwealth only if the court finds that there is probable cause to believe that a crime has been committed and to believe the records sought or other information sought are relevant to a legitimate law-enforcement inquiry into that offense. The court may issue a subpoena duces tecum under this section regardless of whether any criminal charges have been filed.

2. A court issuing an order pursuant to this section, on a motion made promptly by the financial institution or credit card issuer, may quash or modify the subpoena duces tecum, if the information or records requested are unusually voluminous in nature or compliance with such subpoena duces tecum would otherwise cause an undue burden on such provider.

B. No cause of action shall lie in any court against a financial institution or credit card issuer, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance

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60 *in accordance with the terms of a subpoena duces tecum under this section. [A financial institution or*
61 *credit card issuer shall be entitled to reimbursement of such costs as are reasonably necessary to*
62 *comply with the subpoena duces tecum.]*

63 *C. Upon issuance of a subpoena duces tecum under this section, the statement shall be temporarily*
64 *sealed by the court upon application of the attorney for the Commonwealth for good cause shown in an*
65 *ex parte proceeding. Any individual arrested and claiming to be aggrieved by the order may move the*
66 *court for the unsealing of the statement, and the burden of proof with respect to continued sealing shall*
67 *be upon the Commonwealth.*

68 *D. Any and all records received by law enforcement pursuant to this section shall be utilized only for*
69 *a reasonable amount of time and only for a legitimate law-enforcement purpose. Upon the completion of*
70 *the investigation the records shall be submitted to the court by the attorney for the Commonwealth*
71 *along with a proposed order requiring the records to be sealed. Upon entry of such order, the court*
72 *shall seal the records in accordance with the requirements contained in subsection C.*

73 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
74 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
75 **be determined for periods of imprisonment in state adult correctional facilities and is \$0 for**
76 **periods of commitment to the custody of the Department of Juvenile Justice. #**