

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 2.2-511, 19.2-10.1, and 58.1-1017 of the Code of Virginia and to amend the Code of Virginia by adding in Title 18.2 a chapter numbered 13, consisting of sections numbered 18.2-511 through 18.2-516, relating to the Virginia Racketeer Influenced and Corrupt Organization Act; penalties.

[H 1123]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-511, 19.2-10.1, and 58.1-1017 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 18.2 a chapter numbered 13, consisting of sections numbered 18.2-511 through 18.2-516, as follows:

§ 2.2-511. Criminal cases.

A. Unless specifically requested by the Governor to do so, the Attorney General shall have no authority to institute or conduct criminal prosecutions in the circuit courts of the Commonwealth except in cases involving (i) violations of the Alcoholic Beverage Control Act (§ 4.1-100 et seq.), (ii) violation of laws relating to elections and the electoral process as provided in § 24.2-104, (iii) violation of laws relating to motor vehicles and their operation, (iv) the handling of funds by a state bureau, institution, commission or department, (v) the theft of state property, (vi) violation of the criminal laws involving child pornography and sexually explicit visual material involving children, (vii) the practice of law without being duly authorized or licensed or the illegal practice of law, (viii) with the concurrence of the local attorney for the Commonwealth, violations of the Virginia Computer Crimes Act (§ 18.2-152.1 et seq.), (ix) with the concurrence of the local attorney for the Commonwealth, violations of the Air Pollution Control Law (§ 10.1-1300 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), and the State Water Control Law (§ 62.1-44.2 et seq.), (x) with the concurrence of the local attorney for the Commonwealth, violations of Chapters 2 (§ 18.2-18 et seq.), 3 (§ 18.2-22 et seq.), and 10 (§ 18.2-434 et seq.) of Title 18.2, if such crimes relate to violations of law listed in clause (ix) of this subsection, (xi) with the concurrence of the local attorney for the Commonwealth, criminal violations by Medicaid providers or their employees in the course of doing business, or violations of Chapter 13 (§ 18.2-511 et seq.) of Title 18.2, in which cases the Attorney General may leave the prosecution to the local attorney for the Commonwealth, or he may institute proceedings by information, presentment or indictment, as appropriate, and conduct the same, and (xii) with the concurrence of the local attorney for the Commonwealth, violations of Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2.

In all other criminal cases in the circuit courts, except where the law provides otherwise, the authority of the Attorney General to appear or participate in the proceedings shall not attach unless and until a petition for appeal has been granted by the Court of Appeals or a writ of error has been granted by the Supreme Court. In all criminal cases before the Court of Appeals or the Supreme Court in which the Commonwealth is a party or is directly interested, the Attorney General shall appear and represent the Commonwealth. In any criminal case in which a petition for appeal has been granted by the Court of Appeals, the Attorney General shall continue to represent the Commonwealth in any further appeal of a case from the Court of Appeals to the Supreme Court.

B. The Attorney General shall, upon request of a person who was the victim of a crime and subject to such reasonable procedures as the Attorney General may require, ensure that such person is given notice of the filing, of the date, time and place and of the disposition of any appeal or habeas corpus proceeding involving the cases in which such person was a victim. For the purposes of this section, a victim is an individual who has suffered physical, psychological or economic harm as a direct result of the commission of a crime; a spouse, child, parent or legal guardian of a minor or incapacitated victim; or a spouse, child, parent or legal guardian of a victim of a homicide. Nothing in this subsection shall confer upon any person a right to appeal or modify any decision in a criminal, appellate or habeas corpus proceeding; abridge any right guaranteed by law; or create any cause of action for damages against the Commonwealth or any of its political subdivisions, the Attorney General or any of his employees or agents, any other officer, employee or agent of the Commonwealth or any of its political subdivisions, or any officer of the court.

CHAPTER 13.

VIRGINIA RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT.

§ 18.2-511. Short title.

This chapter may be cited as the "Virginia Racketeer Influenced and Corrupt Organization (RICO)

57 Act."

58 § 18.2-512. Definitions.

59 As used in this chapter, the term:

60 "Criminal street gang" shall be as defined in § 18.2-46.1.

61 "Enterprise" includes any of the following: sole proprietorship, partnership, corporation, business
62 trust, criminal street gang; or other group of three or more individuals associated for the purpose of
63 criminal activity.

64 "Proceeds" shall be as defined in § 18.2-246.2.

65 "Racketeering activity" means to commit, attempt to commit, conspire to commit, or to solicit, coerce,
66 or intimidate another person to commit two or more of the following offenses: Article 2.1 (§ 18.2-46.1 et
67 seq.) of Chapter 4 of this title, § 18.2-460; a felony offense of §§ 10.1-1455, 18.2-31, 18.2-32, 18.2-32.1,
68 18.2-33, 18.2-35, Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4 of this title, §§ 18.2-47, 18.2-48,
69 18.2-48.1, 18.2-49, 18.2-51, 18.2-51.2, 18.2-52, 18.2-53, 18.2-55, 18.2-58, 18.2-77, 18.2-79, 18.2-80,
70 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, 18.2-95, Article 4 (§ 18.2-111 et seq.) of Chapter 5 of this
71 title, Article 1 (§ 18.2-168 et seq.) of Chapter 6 of this title, §§ 18.2-178, 18.2-186, Article 6 (§ 18.2-191
72 et seq.) of Chapter 6 of this title, Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of this title, Article 1
73 (§ 18.2-247 et seq.) of Chapter 7 of this title, §§ 18.2-279, 18.2-286.1, 18.2-289, 18.2-300, 18.2-308.2,
74 18.2-308.2:1, 18.2-328, 18.2-355, 18.2-357, 18.2-358, 18.2-369, 18.2-374.1, Article 8 (§ 18.2-433.1 et
75 seq.) of Chapter 9 of this title, Article 1 (§ 18.2-434 et seq.) of Chapter 10 of this title, Article 2
76 (§ 18.2-438 et seq.) of Chapter 10 of this title, Article 3 (§ 18.2-446 et seq.) of Chapter 10 of this title,
77 Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of this title, §§ 18.2-515, 32.1-314, or § 58.1-1017; or
78 any substantially similar offenses under the laws of any other state, the District of Columbia, the United
79 States or its territories.

80 § 18.2-513. Racketeering offenses.

81 A. It shall be unlawful for an enterprise, or for any person who occupies a position of organizer,
82 supervisor, or manager of an enterprise, to receive any proceeds known to have been derived directly
83 from racketeering activity and to use or invest an aggregate of \$10,000 or more of such proceeds in the
84 acquisition of any title to, or any right, interest, or equity in, real property, or in the establishment or
85 operation of any enterprise.

86 B. It shall be unlawful for any enterprise, or for any person who occupies a position of organizer,
87 supervisor, or manager of an enterprise, to directly acquire or maintain any interest in or control of any
88 enterprise or real property through racketeering activity.

89 C. Each violation of this section is a separate and distinct felony punishable in accordance with
90 § 18.2-514.

91 § 18.2-514. Criminal penalties; forfeiture.

92 A. Any person or enterprise convicted of engaging in activity in violation of the provisions of
93 § 18.2-513 is guilty of a felony punishable by imprisonment for not less than five years nor more than
94 40 years and a fine of not more than \$1 million. A second or subsequent offense shall be punishable as
95 a Class 2 felony and a fine of not more than \$2 million.

96 The court may order any such person or enterprise to be divested of any interest in any enterprise or
97 real property; order the dissolution or reorganization of any business; and order the suspension or
98 revocation of any license, permit, or prior approval granted to any business by any agency of the
99 Commonwealth or political subdivision thereof.

100 B. All property, real or personal, including money, used in substantial connection with, intended for
101 use in the course of, or traceable to, conduct in violation of any provision of § 18.2-513 is subject to
102 civil forfeiture to the Commonwealth. The forfeiture proceeding shall be conducted pursuant to the
103 provisions of Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2.

104 § 18.2-515. Prohibition of illegal money transmitting.

105 A. Any person who controls, manages, or owns all or part of an enterprise, engaged in money
106 transmission as defined in § 6.1-370, and transmits money, which he knows or should have known was
107 derived from or traceable to racketeering activity, is guilty of a Class 6 felony.

108 B. All property, real or personal, including money, used in substantial connection with, intended for
109 use in the course of, or traceable to, conduct in violation of any provision of subsection A is subject to
110 civil forfeiture to the Commonwealth. The forfeiture proceeding shall be conducted pursuant to the
111 provisions of Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2.

112 § 18.2-516. Venue for prosecution.

113 For the purposes of venue, any violation of this chapter shall be considered to have been committed
114 in any county or city:

- 115 1. In which any act was performed in furtherance of any course of conduct that violates this chapter;
- 116 2. That is the principal place of the enterprise in the Commonwealth;
- 117 3. In which any offender had control or possession of any proceeds of a violation of this chapter, or

118 of any records, or any other material or objects, which were used in furtherance of a violation;

119 4. In which any offender resides; or

120 5. Any place of venue under Article 2 (§ 19.2-244 et seq.) of Chapter 15 of Title 19.2.

121 § 19.2-10.1. Subpoena duces tecum for obtaining records concerning banking and credit cards.

122 A. A financial institution as defined in § 6.1-125.1, money transmitter as defined in § 6.1-370, or
123 commercial businesses providing credit history or credit reports; or a credit card issuer as defined in
124 § 11-30 shall disclose a record or other information pertaining to a customer, to a law-enforcement
125 officer pursuant to a subpoena duces tecum issued pursuant to this section.

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

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

138 B. No cause of action shall lie in any court against a financial institution or credit card, or
139 enterprise, its officers, employees, agents, or other specified persons for providing information, facilities,
140 or assistance in accordance with the terms of a subpoena duces tecum under this section.

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

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

151 § 58.1-1017. Sale, purchase, possession, etc., of cigarettes for purpose of evading tax.

152 A. It shall be unlawful for any person, except as otherwise provided by law, to sell, purchase,
153 transport, receive or possess less than 3,000 packages of cigarettes unless the same have been stamped
154 in the manner required by law, for the purpose of evading the payment of the taxes on such products.
155 Any person violating the provisions of this subsection shall be guilty of a Class 2 misdemeanor.

156 B. It shall be unlawful for any person, except as otherwise provided by law, to sell, purchase,
157 transport, receive or possess 3,000 or more packages of cigarettes unless the same have been stamped
158 in the manner required by law, for the purpose of evading the payment of the taxes on such products.
159 Any person violating the provisions of this subsection shall be guilty of a Class 6 felony.

160 C. If a person who is not a regularly licensed dealer as provided in § 58.1-1011 has in his possession
161 within the Commonwealth more than thirty 30 packages of unstamped cigarettes, such possession shall
162 be presumed to be for the purpose of evading the payment of the taxes due thereon.

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