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SENATE BILL NO. 320

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice)

(Patron Prior to Substitute—Senator Stolle)

Senate Amendments in [] — February 10, 2004

A BILL to amend and reenact §§ 2.2-511, 6.1-375, 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.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-511, 6.1-375, 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.

§ 6.1-375. Examination of books by Commission.

~~Any person required by this chapter to have a license who sells money orders or engages in the business of money transmission without first being licensed shall be guilty of a Class 1 misdemeanor. The Commission shall have authority to examine the books and records of all persons engaged in the sale of money orders or engaged in the business of money transmission either directly or through agents~~

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and shall report violations of this chapter to the attorney for the Commonwealth of the city or county in which such violation occurs. The Commission may make an examination of the books and records of each licensee as often as it is deemed to be in the public interest, and shall adjust the surety bond as it may deem necessary in accordance with § 6.1-372 A. If the Commission determines, based on the licensee's financial statements and past history of operations in the Commonwealth that an examination is unnecessary, the examination may be waived by the Commission. The examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states. The Commission, in lieu of an examination, may accept the examination report of an agency of another state or a report prepared by an independent accounting firm. Every licensee so examined shall pay all costs and expenses associated with such examination within ~~thirty~~ 30 days of assessment. For the foregoing purposes, the person designated by the Commission to make such examinations shall have authority to administer oaths, examine under oath in the course of such examinations, the principals, officers, directors, partners, and employees of any person required to be licensed by this chapter and compel the production of documents.

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) Act."

§ 18.2-512. Definitions.

As used in this chapter, the term:

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

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

"Illegal money transmitting business" means a money transmitting enterprise that is intentionally operated without an appropriate money transmitting license as stated in Chapter 12 (§ 6.1-370 et seq.) of Title 6.1; or fails to comply with the money transmitting enterprise registration requirements under § 5330 of Title 31, United States Code, or regulations prescribed under such section.

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

"Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit two or more offenses of any of the following: §§ 4.1-300, 4.1-301; § 6.1-445; § 10.1-1455; §§ 18.2-31, 18.2-32, 18.2-32.1, 18.2-33, 18.2-35; any Class 5 felony violation of § 18.2-47; any felony violation of §§ 18.2-48, 18.2-48.1 or § 18.2-49; any violation of §§ 18.2-51, 18.2-51.2, 18.2-52, 18.2-53, 18.2-55 or § 18.2-58; any violation of subsection A of § 18.2-77; any felony violation of § 18.2-79 or § 18.2-80; any violation of §§ 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93 or § 18.2-95; any violation of §§ 18.2-178, 18.2-186 or § 18.2-279; any violation of §§ 18.2-286.1, 18.2-289, 18.2-300; any felony violation of § 18.2-308.2, or § 18.2-308.2.1; any violation of § 18.2-328; any violation of subsection (2) or (3) of § 18.2-355; any violation of § 18.2-357 or § 18.2-358; any felony violation of § 18.2-369; any violation of § 18.2-374.1; any violation of subsection C of § 18.2-460; or any violation of § 32.1-314 or § 58.1-1017. Further, any violation of the following articles in Title 18.2: Chapter 4, Articles 2.1 (§ 18.2-46.1 et seq.), or 2.2 (§ 18.2-46.4 et seq.); Chapter 5, Article 4 (§ 18.2-111 et seq.); Chapter 6, Articles 1 (§ 18.2-168 et seq.), 4 (§ 18.2-181 et seq.), 6 (§ 18.2-191 et seq.), or 9 (18.2-246.1 et seq.); Chapter 7, Article 1 (§ 18.2-247 et seq.); Chapter 9, Article 8 (§ 18.2-433.1 et seq.); Chapter 10, Articles 1 (§ 18.2-434 et seq.), 2 (§ 18.2-438 et seq.), or 3 (§ 18.2-446 et seq.); Chapter 12, Article 1.1 (§ 18.2-498.1 et seq.); or any offense included in this chapter; or any substantially similar offenses under the laws of any other state, the District of Columbia, the United States or its territories.

§ 18.2-513. Racketeering offense activities.

A. It shall be unlawful for any person or enterprise to receive any proceeds known to have been derived directly from racketeering activity and to use or invest any part of such proceeds in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

B. It shall be unlawful for any person or enterprise to acquire or maintain, directly, any interest in or control of any enterprise or real property through racketeering activity.

C. Each violation of this section shall constitute a separate and distinct felony and any punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of any other offense.

§ 18.2-514. Criminal penalties; forfeiture.

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

a Class 2 felony and a fine of not more than \$2 million.

The court may also order any defendant to divest himself of any interest in any enterprise, including real property, and impose reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting the defendant from engaging in the same type of endeavor as the enterprise in which the defendant was engaged in violation of the provisions of § 18.2-513.

The court may also order the dissolution or reorganization of any business, and shall order the suspension or revocation of any license, permit, or prior approval granted to any business by any agency of the Commonwealth.

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

C. The application of one civil remedy under any provision of this chapter does not preclude the application of any other remedy, civil or criminal, under this chapter or any other provision of the code or of common law. Civil remedies under this chapter are supplemental, and not mutually exclusive.

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

A. Whoever conducts, controls, manages, directs, participates in, or owns all or part of an enterprise, knowing the enterprise is an illegal money transmitting business, is guilty of a Class 5 felony.

B. All property, real or personal, used in substantial connection with, intended for use in the course of, or traceable to conduct in violation of, any provision of this section is subject to civil forfeiture to the Commonwealth, as provided in § 18.2-514.

C. The application of one civil remedy under any provision of this chapter does not preclude the application of any other remedy, civil or criminal, under this chapter or any other provision of the code or of common law. Civil remedies under this chapter are supplemental, and not mutually exclusive.

D. A violation of this section shall constitute a separate and distinct felony and any punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of any other offense.

E. The provisions of this section do not abrogate the duties and responsibilities imposed pursuant to Chapter 12 (§ 6.1-370 et seq.) of Title 6.1.

§ 18.2-516. Venue for prosecution.

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

1. In which any act was performed in furtherance of any course of conduct that violated this chapter;

2. That is the principal place of the enterprise in the Commonwealth;

3. In which any offender had control or possession of any proceeds of a violation of this chapter, or of any records, or any other material or objects, which were used in furtherance of a violation;

4. In which any offender resides; or

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

§ 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, money transmitter as defined in § 6.1-370, or commercial businesses providing credit history or credit reports; 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, or enterprise 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, or enterprise, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a subpoena duces tecum under this section.

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

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

193 § 58.1-1017. Sale, purchase, possession, etc., of cigarettes for purpose of evading tax.

194 It shall be unlawful for any person, except as otherwise provided by law, to sell, purchase, transport,
195 receive or possess cigarettes unless the same have been stamped in the manner required by ~~law~~ *the laws*
196 *of this Commonwealth, or any other state or territory of the United States*, for the purpose of evading
197 the payment of the taxes on such products. Any person violating the provisions of this section shall be
198 guilty of a Class 2 ~~misdemeanor~~ *felony*.

199 If a person who is not a regularly licensed dealer as provided in § 58.1-1011 has in his possession
200 within the Commonwealth more than ~~thirty~~ [~~30~~ 300] packages of unstamped cigarettes, such
201 possession shall be presumed to be for the purpose of evading the payment of the taxes due thereon.

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