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SENATE BILL NO. 320

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on March 1, 2004)

(Patron Prior to Substitute—Senator Stolle)

A BILL 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.

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) Act."

HOUSE SUBSTITUTE

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§ 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.

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

"Racketeering activity" means to commit, attempt to commit, conspire to commit, or to solicit, coerce, or intimidate another person to commit two or more of the following offenses: Article 2.1 (§ 18.2-46.1 et seq.) of Chapter 4 of Title 18.2, § 18.2-460; a felony offense of §§ 10.1-1455, 18.2-31, 18.2-32, 18.2-32.1, 18.2-33, 18.2-35, Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4 of Title 18.2, 18.2-47, 18.2-48, 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, 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 Title 18.2, Article 1 (§ 18.2-168 et seq.) of Chapter 6 of Title 18.2, 18.2-178, 18.2-186, Article 6 (§ 18.2-191 et seq.) of Chapter 6 of Title 18.2, Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2, Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, 18.2-279, 18.2-286.1, 18.2-289, 18.2-300, 18.2-308.2, 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 seq.) of Chapter 9 of Title 18.2, Article 1 (§ 18.2-434 et seq.) of Chapter 10 of Title 18.2, Article 2 (§ 18.2-438 et seq.) of Chapter 10 of Title 18.2, Article 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2, Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of Title 18.2, 18.2-515, 32.1-314, or § 58.1-1017; 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 offenses.

A. It shall be unlawful for an enterprise, or for any person who occupies a position of organizer, supervisor, or manager of an enterprise, to receive any proceeds known to have been derived directly from racketeering activity and to use or invest an aggregate of \$10,000 or more 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 enterprise, or for any person who occupies a position of organizer, supervisor, or manager of an enterprise, to directly acquire or maintain any interest in or control of any enterprise or real property through racketeering activity.

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

§ 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 order such person or enterprise to be divested of any interest in any enterprise or real property identified in § 18.2-513; order the dissolution or reorganization of such enterprise; and order the suspension or revocation of any license, permit, or prior approval granted to such enterprise by any agency of the Commonwealth or political subdivision thereof.

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 be conducted pursuant to the provisions of Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2.

§ 18.2-515. Prohibition of illegal money transmitting.

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

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 subsection A is subject to civil forfeiture to the Commonwealth. The forfeiture proceeding shall be conducted pursuant to the provisions of Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2.

§ 18.2-516. Venue for prosecution.

For the purposes of venue, 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 violates 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.

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

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

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

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

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

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

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