



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1123

Amendment in the Nature of a Substitute (Patron Prior to Substitute – McDonnell)

Date Submitted: 2/11/04

LD #: 04-0968404

Topic: Virginia Racketeer Influenced and Corrupt Organization Act

Proposed Change:

This proposal amends §§ 2.2-511, 19.2-10.1 and 58.1-1017 of the *Code of Virginia* and adds Chapter 13 in Title 18.2, consisting of §§ 18.2-511 through 18.2-516, relating to the Virginia Racketeer Influenced and Corrupt Organization (RICO) Act. Among other things, the proposed legislation:

- Amends § 2.2-511 giving the Attorney General authority to conduct criminal prosecutions in circuit courts of the Commonwealth in cases involving violations of the Virginia RICO Act;
- Prohibits any person or enterprise (sole proprietorship, partnership, business trust, criminal street gang, etc.) from receiving proceeds derived from racketeering activity or using such proceeds (valued at \$10,000 or more) to acquire or maintain any interest in or control of any other enterprise or real property. Violations of these provisions would be felonies punishable by imprisonment from 5 to 40 years and a fine of not more than \$1 million. A second or subsequent offense would be punishable as a Class 2 felony, with a fine of not more than \$2 million.
- Prohibits illegal money transmitting. Any person who controls or owns all or part of an enterprise, and who knowingly transmits money derived from or traceable to racketeering activity, is guilty of a Class 6 felony.
- Amends § 19.2-10.1 setting conditions for the disclosure of records by a financial institution (as defined in § 6.1-125.1), a money transmitter (as defined in § 6.1-370), a commercial business or a credit card issuer pursuant to a subpoena duces tecum;
- Amends § 58.1-1017 to increase the penalty for the unlawful sale, purchase or possession of 3,000 or more packages of cigarettes for the purpose of evading the payment of taxes from a Class 2 misdemeanor to a Class 6 felony. If the quantity of cigarettes involved is less than 3,000 packages, the offense remains a Class 2 misdemeanor.

Currently, racketeering is not specifically defined in the *Code of Virginia*; however, federal *Code* does contain RICO provisions.

Data Analysis:

According to fiscal year (FY) 2001 and FY2002 Local Inmate Data System (LIDS) data, there were no misdemeanor convictions for illegally engaging in monetary transmissions or sale of money orders without a license under § 6.1-375. There were also no convictions for the unlawful sale, purchase or possession of cigarettes under § 58.1-1017.

Impact of Proposed Legislation:

The proposed legislation may have an impact on state-responsible (prison) beds. The proposal creates a number of new offenses not currently specified in the *Code*. It also increases the penalty for the unlawful sale, purchase or possession of cigarettes from a misdemeanor to a felony when at least 3,000 packages of cigarettes are involved. However, the extent of the impact, if any, cannot be determined with existing criminal justice databases. Therefore, the magnitude of any impact cannot be quantified. Similarly, the impact on jails and community corrections cannot be quantified.

Convictions under the proposed legislation would not be covered by the guidelines as the primary, or most serious, offense but could augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the sentencing guidelines would be necessary under the proposal.

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.

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