



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 149

(Patron – Albo)

Date Submitted: 12/18/03

LD #: 04-7655204

Topic: Pass-through entities

Proposed Change:

The proposed legislation amends §§ 58.1-391, 58.1-392 and 58.1-441 of the *Code of Virginia* and adds §§ 58.1-390.1, 58.1-390.2, 58.1-393.1, 58.1-394.1, 58.1-394.2 and 58.1-395 relating to pass-through entities information return filing. It also repeals §§ 58.1-390 and 58.1-394. The proposed § 58.1-390.1 defines a “pass-through entity” as any entity, including but not limited to, a limited partnership, general partnership, or business trust, in which the partners, members or shareholders report their share of the income, gains, losses, deductions and credits from the entity on their federal income tax returns. Other proposed sections set conditions for the reporting and taxation of such entities. The proposed § 58.1-394.2 sets penalties for fraudulent returns or failure to make a required return on a pass-through entity. Any officer or owner of such an entity who makes a fraudulent return or statement with the intent to evade the payment of taxes is guilty of a Class 6 felony, and is subject to a fine of not more than \$1,000. Any such person who willfully fails or refuses to make a required return is guilty of a Class 1 misdemeanor.

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.

Data Analysis:

Currently under §§ 58.1-394, 58.1-451 and 58.1-452, any officer of any corporation or partnership who makes a fraudulent return or statement with the intent to evade the payment of taxes is guilty of a Class 6 felony, and is subject to a fine of not more than \$1,000. This crime was recently upgraded from a Class 1 misdemeanor by the 2003 session of the General Assembly. Data is not yet available to determine the frequency of felony violations for this offense. According to fiscal year (FY) 2001 and FY2002 Local Inmate Data System (LIDS) data, there were no convictions for the misdemeanor version of this offense.

Impact of Proposed Legislation:

The proposed legislation may have an impact on state-responsible (prison) beds. The proposal creates new offenses not currently specified in the *Code*. At least some of these offenses may currently be

The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

covered under §§ 58.1-394, 58.1-451 and 58.1-452. 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.

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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