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SENATE BILL NO. 544

Senate Amendments in [] — February 11, 2008

A BILL to amend and reenact §§ 2.2-511, 3.1-336.10, 18.2-246.11, 18.2-246.13, 18.2-246.15, 18.2-513, and 18.2-514 of the Code of Virginia and to amend the Code of Virginia by adding in Article 6 of Chapter 18 of Title 3.1 a section numbered 3.1-336.17 and by adding sections numbered 19.2-245.01 and 58.1-1008.2, relating to the Master Settlement Agreement; criminal enforcement activities; penalty.

Patron Prior to Engrossment—Senator Hurt

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-511, 3.1-336.10, 18.2-246.11, 18.2-246.13, 18.2-246.15, 18.2-513, and 18.2-514 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 6 of Chapter 18 of Title 3.1 a section numbered 3.1-336.17 and by adding sections numbered 19.2-245.01 and 58.1-1008.2 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) *violations of § 3.1-336.17 or 58.1-1008.2*, (ix) with the concurrence of the local attorney for the Commonwealth, violations of the Virginia Computer Crimes Act (§ 18.2-152.1 et seq.), ~~(ix)~~ (x) 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)~~ (xi) 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)~~ (x) of this subsection, ~~(xi)~~ (xii) 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 (§ 18.2-512 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, ~~(xii)~~ (xiii) 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, ~~(xiii)~~ (xiv) with the concurrence of the local attorney for the Commonwealth, assisting in the prosecution of violations of §§ 18.2-186.3 and 18.2-186.4, and ~~(xiv)~~ (xv) with the concurrence of the local attorney for the Commonwealth, assisting in the prosecution of violations of § 18.2-46.2, 18.2-46.3, or 18.2-46.5 when such violations are committed on the grounds of a state correctional facility, and (xvi) with the concurrence of the local attorney for the Commonwealth, assisting in the prosecution of violations of Article 10 (§ 18.2-246.6 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;

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60 or a spouse, child, parent or legal guardian of a victim of a homicide. Nothing in this subsection shall
61 confer upon any person a right to appeal or modify any decision in a criminal, appellate or habeas
62 corpus proceeding; abridge any right guaranteed by law; or create any cause of action for damages
63 against the Commonwealth or any of its political subdivisions, the Attorney General or any of his
64 employees or agents, any other officer, employee or agent of the Commonwealth or any of its political
65 subdivisions, or any officer of the court.

66 § 3.1-336.10. Penalties and other remedies.

67 A. In addition to any other civil or criminal penalty or remedy provided by law, upon a
68 determination that any person has violated § 3.1-336.6 or any regulation adopted pursuant thereto, the
69 Commissioner may revoke or suspend such person's privilege to purchase tax stamps at a discounted
70 rate. Each stamp affixed and each offer to sell cigarettes in violation of § 3.1-336.6 shall constitute a
71 separate violation. Upon a determination of a violation of § 3.1-336.6 or any regulations adopted
72 pursuant thereto, the Commissioner may also impose a civil penalty in an amount not to exceed the
73 greater of (i) 500 percent of the retail value of the cigarettes sold or (ii) \$5,000.

74 B. Any cigarettes that have been sold, offered for sale or possessed for sale in the Commonwealth,
75 or imported for personal consumption in the Commonwealth, in violation of § 3.1-336.6, shall be
76 deemed contraband and may not be sold or offered for sale unless such cigarettes are listed in the
77 Directory. Any such cigarettes that are sold or offered for sale when not included in the Directory shall
78 be subject to confiscation and forfeiture. Any such confiscation and forfeiture shall be governed by the
79 procedures contained in § 4.1-338, which shall apply mutatis mutandis; except that all such cigarettes so
80 confiscated and forfeited shall be destroyed and not resold.

81 C. The Attorney General, ~~on behalf of the Commissioner,~~ may seek an injunction to restrain a
82 threatened or actual violation of § 3.1-336.6, subsection A of § 3.1-336.8, subsection B of § 3.1-336.8,
83 or subsection C of § 3.1-336.8 by a stamping agent and to compel the stamping agent to comply with
84 such provisions. In any action brought pursuant to this subsection in which the Commonwealth prevails,
85 the Commonwealth shall be entitled to recover the reasonable costs of investigation, costs of the action
86 and reasonable attorneys' fees.

87 D. It shall be unlawful for a person to (i) sell or distribute cigarettes or (ii) acquire, hold, own,
88 possess, transport, import, or cause to be imported cigarettes that the person knows or should know are
89 intended for distribution or sale in the Commonwealth in violation of § 3.1-336.6. A violation of this
90 section is a ~~Class 2 misdemeanor~~ *involving less than 3,000 packages of cigarettes is a Class 1*
91 *misdemeanor. A violation of this section involving 3,000 or more packages of cigarettes is a Class 6*
92 *felony.*

93 § 3.1-336.17. *Materially false statements.*

94 *Any tobacco product manufacturer, stamping agent, or importer of cigarettes, or any officer,*
95 *employee, or agent of any such entity, who knowingly makes any materially false statement in any*
96 *record required by this article or Article 5 (§ 3.1-336.1 et seq.) of this chapter to be kept, or in any*
97 *document required by this article or Article 5 of this chapter to be filed with the Attorney General shall*
98 *be guilty of a Class 6 felony. Each document filed containing one or more false statements shall*
99 *constitute a separate offense.*

100 § 18.2-246.11. Registration and reporting requirements.

101 A. Prior to making delivery sales or mailing, shipping, or otherwise delivering cigarettes in
102 connection with any such delivery sales, every person shall file with the Board *and with the Attorney*
103 *General* a statement setting forth such person's name, trade name, and the address of such person's
104 principal place of business and any other place of business.

105 B. Not later than the tenth day of each calendar month, each person that has made a delivery sale or
106 mailed, shipped, or otherwise delivered cigarettes in connection with any such delivery sale during the
107 previous calendar month shall file with the Board *and with the Attorney General* a report in the format
108 prescribed by the Board, which may include an electronic format, that provides for each and every such
109 delivery sale:

- 110 1. The name and address of the consumer to whom such delivery sale was made;
- 111 2. The brand or brands of the cigarettes that were sold in such delivery sale; and
- 112 3. The quantity of cigarettes that were sold in such delivery sale.

113 C. Any person who satisfies the requirements of § 376 of Title 15 of the United States Code shall be
114 deemed to satisfy the requirements of this section.

115 [*D. For purposes of any penalty that may be imposed for a violation of this section, a failure to file*
116 *a particular statement or report with both the Board and the Attorney General shall constitute a single*
117 *violation.*]

118 § 18.2-246.13. Penalties.

119 A. Except as specifically provided in § 18.2-246.14, a first violation of any provision of this article
120 shall be punishable by a civil penalty of no more than \$1,000. A second or subsequent violation of any
121 provision of this article shall be punishable by a civil penalty of no more than \$10,000.

122 B. Any prospective consumer who knowingly submits a false certification under subdivision A 1 of
123 § 18.2-246.8 shall be subject to a civil penalty of no more than \$5,000 for each such offense.

124 C. Any person failing to collect or remit to the Board or the Department of Taxation any tax
125 required in connection with a delivery sale shall be assessed, in addition to any other applicable penalty,
126 a civil penalty of no more than five times the retail value of the cigarettes involved.

127 D. Any civil penalty collected under this article shall be paid to the general fund.

128 E. Any person who fails to file the statement required by subsection A of § 18.2-246.11 and
129 thereafter makes a delivery sale is guilty of a Class 1 misdemeanor and for any second or subsequent
130 sale is guilty of a Class 6 felony.

131 F. Any person who knowingly makes a materially false statement filed as required by subsection A of
132 § 18.2-246.11 is guilty of a Class 6 felony. Each such filed statement containing one or more false
133 statements shall constitute a separate offense.

134 G. Any person who fails to make the report required by subsection B of § 18.2-246.11 is guilty of a
135 Class 1 misdemeanor and for any second or subsequent offense is guilty of a Class 6 felony.

136 H. Any person who knowingly makes a materially false statement in any report required by
137 subsection B of § 18.2-246.11 is guilty of a Class 6 felony. Each such report containing one or more
138 false statements constitutes a separate offense.

139 § 18.2-246.15. Enforcement.

140 The Attorney General is authorized to enforce the provisions of this article. The Attorney General
141 may assess the civil penalties authorized by this article, prosecute criminal violations under
142 § 18.2-246.13, and bring an action in the appropriate court in the Commonwealth to collect assessed
143 penalties or prevent or restrain violations of this article by any person, or any person controlling such
144 person. The Board and the State Department of Taxation shall cooperate with the Attorney General in
145 his enforcement efforts and provide to the Attorney General all information and documentation in their
146 possession necessary for the Attorney General to accomplish such enforcement.

147 § 18.2-513. Definitions.

148 As used in this chapter, the term:

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

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

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

154 "Racketeering activity" means to commit, attempt to commit, conspire to commit, or to solicit,
155 coerce, or intimidate another person to commit two or more of the following offenses: Article 2.1
156 (§ 18.2-46.1 et seq.) of Chapter 4 of this title, § 18.2-460; a felony offense of §§ 3.1-336.10, 3.1-336.17,
157 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
158 of this title, §§ 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,
159 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
160 (§ 18.2-111 et seq.) of Chapter 5 of this title, Article 1 (§ 18.2-168 et seq.) of Chapter 6 of this title,
161 §§ 18.2-178, 18.2-186, Article 6 (§ 18.2-191 et seq.) of Chapter 6 of this title, Article 9 (§ 18.2-246.1 et
162 seq.) of Chapter 6 of this title, 18.2-246.13, Article 1 (§ 18.2-247 et seq.) of Chapter 7 of this title,
163 §§ 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,
164 18.2-369, 18.2-374.1, Article 8 (§ 18.2-433.1 et seq.) of Chapter 9 of this title, Article 1 (§ 18.2-434 et
165 seq.) of Chapter 10 of this title, Article 2 (§ 18.2-438 et seq.) of Chapter 10 of this title, Article 3
166 (§ 18.2-446 et seq.) of Chapter 10 of this title, Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of this
167 title, §§ 18.2-516, 32.1-314, 58.1-1008.2, or § 58.1-1017; or any substantially similar offenses under the
168 laws of any other state, the District of Columbia, the United States or its territories.

169 § 18.2-514. Racketeering offenses.

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

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

178 C. It shall be unlawful for any person employed by, or associated with, any enterprise to conduct or
179 participate, directly or indirectly, in such enterprise through racketeering activity.

180 D. It shall be unlawful for any person to conspire or endeavor to violate any of the provisions of
181 subsection A, B, or C.

182 E. Each violation of this section is a separate and distinct felony punishable in accordance with

183 § 18.2-515.

184 § 19.2-245.01. *Offenses involving reports or statements concerning cigarette sales or stamping.*

185 *Any criminal violation of Article 5 (§ 3.1-336.1 et seq.) or Article 6 (§ 3.1-336.3 et seq.) of Chapter*
186 *18 of Title 3.1 or of § 18.2-246.13 or 18.2-514 involving reports or statements concerning cigarette*
187 *sales or stamping may be prosecuted in the City of Richmond.*

188 § 58.1-1008.2. *Materially false statements in reports.*

189 *Any tobacco product manufacturer, stamping agent, or importer of cigarettes, or any officer,*
190 *employee, or agent of any such entity, who knowingly makes any materially false statement in any*
191 *record required by this article or Article 2.1 (§ 58.1-1021.01 et seq.) of this chapter to be kept, or in*
192 *any report or return required by this article or Article 2.1 of this chapter to be filed with the*
193 *Department shall be guilty of a Class 6 felony. Each record kept and each report or return filed*
194 *containing one or more false statements shall constitute a separate offense.*

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

199 **3. That the provisions of this act shall become effective on July 1, 2008, unless no appropriation**
200 **of general funds effectuating the purposes of this act is included in the general appropriation act**
201 **passed by the 2008 Session of the General Assembly, which becomes law. If no funding is provided**
202 **pursuant to the general appropriation act passed by the 2008 Session of the General Assembly,**
203 **this act shall become effective upon the appropriation of general funds effectuating the purposes of**
204 **this act in a general appropriation act passed by a subsequent session of the General Assembly,**
205 **which becomes law.**