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SENATE BILL NO. 1302

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of justice
on February 20, 2009)

(Patron Prior to Substitute—Senator Hurt)

A *BILL to amend and reenact §§ 2.2-511, 3.2-4212, 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 3 of Chapter 42 of Title 3.2 a section numbered 3.2-4219 and by adding sections numbered 19.2-245.01 and 58.1-1008.2, relating to the Master Settlement Agreement; criminal enforcement activities; penalty.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-511, 3.2-4212, 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 3 of Chapter 42 of Title 3.2 a section numbered 3.2-4219 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 § 3.2-4212 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; 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

60 corpus proceeding; abridge any right guaranteed by law; or create any cause of action for damages
61 against the Commonwealth or any of its political subdivisions, the Attorney General or any of his
62 employees or agents, any other officer, employee or agent of the Commonwealth or any of its political
63 subdivisions, or any officer of the court.

64 § 3.2-4212. Penalties and other remedies.

65 A. In addition to any other civil or criminal penalty or remedy provided by law, upon a
66 determination that any person has violated § 3.2-4207 or any regulation adopted pursuant thereto, the
67 Commissioner may revoke or suspend such person's privilege to purchase tax stamps at a discounted
68 rate. Each stamp affixed and each offer to sell cigarettes in violation of § 3.2-4207 shall constitute a
69 separate violation. Upon a determination of a violation of § 3.2-4207 or any regulations adopted
70 pursuant thereto, the Commissioner may also impose a civil penalty in an amount not to exceed the
71 greater of (i) 500 percent of the retail value of the cigarettes sold or (ii) \$5,000.

72 B. Any cigarettes that have been sold, offered for sale or possessed for sale in the Commonwealth,
73 or imported for personal consumption in the Commonwealth, in violation of § 3.2-4207, shall be deemed
74 contraband and may not be sold or offered for sale unless such cigarettes are listed in the Directory.
75 Any such cigarettes that are sold or offered for sale when not included in the Directory shall be subject
76 to confiscation and forfeiture. Any such confiscation and forfeiture shall be governed by the procedures
77 contained in § 4.1-338, which shall apply mutatis mutandis; except that all such cigarettes so confiscated
78 and forfeited shall be destroyed and not resold.

79 C. The Attorney General may seek an injunction to restrain a threatened or actual violation of
80 § 3.2-4207, subsection A of § 3.2-4209, subsection B of § 3.2-4209, or subsection C of § 3.2-4209 by a
81 stamping agent and to compel the stamping agent to comply with such provisions. In any action brought
82 pursuant to this subsection in which the Commonwealth prevails, the Commonwealth shall be entitled to
83 recover the reasonable costs of investigation, costs of the action and reasonable attorneys' fees.

84 D. It shall be unlawful for a person to (i) sell or distribute cigarettes or (ii) acquire, hold, own,
85 possess, transport, import, or cause to be imported cigarettes that the person knows or should know are
86 intended for distribution or sale in the Commonwealth in violation of § 3.2-4207. A violation of this
87 section is a ~~Class 2 misdemeanor~~ involving less than 3,000 packages of cigarettes is a Class 1
88 misdemeanor. A violation of this section involving 3,000 or more packages of cigarettes is a Class 1
89 misdemeanor, and, upon conviction, the sentence of such person shall include a mandatory minimum
90 term of confinement of 90 days.

91 § 3.2-4219. Materially false statements.

92 Any tobacco product manufacturer, stamping agent, or importer of cigarettes, or any officer,
93 employee, or agent of any such entity, who knowingly and with the intent to defraud, mislead, or
94 deceive makes any materially false statement in any record required by this chapter to be kept, or in
95 any document required by this chapter to be filed with the Attorney General is guilty of a violation of
96 § 18.2-498.3. Each document filed containing one or more false statements shall constitute a separate
97 offense.

98 § 18.2-246.11. Registration and reporting requirements.

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

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

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

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

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

116 § 18.2-246.13. Penalties.

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

120 B. Any prospective consumer who knowingly submits a false certification under subdivision A 1 of
121 § 18.2-246.8 shall be subject to a civil penalty of no more than \$5,000 for each such offense.

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

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

E. Any person who fails to file the statement required by subsection A of § 18.2-246.11 and thereafter makes a delivery sale is guilty of a Class 1 misdemeanor and for any second or subsequent offense is guilty of a violation of § 18.2-498.3.

F. Any person who knowingly and with the intent to defraud, mislead, or deceive makes a materially false statement filed as required by subsection A of § 18.2-246.11 is guilty of a violation of § 18.2-498.3. Each such filed statement containing one or more false statements shall constitute a separate offense.

G. Any person who fails to make the report required by subsection B of § 18.2-246.11 is guilty of a Class 1 misdemeanor and for any second or subsequent offense is guilty of a violation of § 18.2-498.3.

H. Any person who knowingly and with the intent to defraud, mislead, or deceive makes a materially false statement in any report required by subsection B of § 18.2-246.11 is guilty of a violation of § 18.2-498.3. Each such report containing one or more false statements constitutes a separate offense.

§ 18.2-246.15. Enforcement.

The Attorney General is authorized to enforce the provisions of this article. The Attorney General may assess the civil penalties authorized by this article, with the concurrence of the attorney for the Commonwealth pursuant to § 2.2-511, may prosecute criminal violations under § 18.2-246.13, and may bring an action in the appropriate court in the Commonwealth to collect assessed penalties or prevent or restrain violations of this article by any person, or any person controlling such person. The Board and the State Department of Taxation shall cooperate with the Attorney General in his enforcement efforts and provide to the Attorney General all information and documentation in their possession necessary for the Attorney General to accomplish such enforcement.

§ 18.2-513. 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 this title, § 18.2-460; a felony offense of §§ 3.2-4212, 3.2-4219, 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 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, 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 this title, Article 1 (§ 18.2-168 et seq.) of Chapter 6 of this title, §§ 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 seq.) of Chapter 6 of this title, § 18.2-246.13, Article 1 (§ 18.2-247 et seq.) of Chapter 7 of this title, §§ 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, 18.2-369, 18.2-374.1, Article 8 (§ 18.2-433.1 et seq.) of Chapter 9 of this title, Article 1 (§ 18.2-434 et seq.) of Chapter 10 of this title, Article 2 (§ 18.2-438 et seq.) of Chapter 10 of this title, Article 3 (§ 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 title, § 3.2-6571, 18.2-516, 32.1-314, 58.1-1008.2, 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.

§ 18.2-514. 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. It shall be unlawful for any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through racketeering activity.

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

E. Each violation of this section is a separate and distinct felony punishable in accordance with § 18.2-515.

183 *§ 19.2-245.01. Offenses involving reports or statements concerning cigarette sales or stamping.*

184 *Any criminal violation of Chapter 42 (§ 3.2-4200 et seq.) of Title 3.2 or of § 18.2-246.13 or 18.2-514*
185 *involving reports or statements concerning cigarette sales or stamping may be prosecuted in the City of*
186 *Richmond.*

187 *§ 58.1-1008.2. Materially false statements in reports.*

188 *Any tobacco product manufacturer, stamping agent, or importer of cigarettes, or any officer,*
189 *employee, or agent of any such entity, who knowingly and with the intent to defraud, mislead, or*
190 *deceive makes any materially false statement in any record required by this article or Article 2.1*
191 *(§ 58.1-1021.01 et seq.) of this chapter to be kept, or in any report or return required by this article or*
192 *Article 2.1 of this chapter to be filed with the Department is guilty of a violation of § 18.2-498.3. Each*
193 *record kept and each report or return filed containing one or more false statements shall constitute a*
194 *separate offense.*