



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1302

Amendment in the Nature of a Substitute

(Patron Prior to Substitute – Hurt)

LD#: 09-1539250

Date: 1/29/2009

Topic: Materially false statements by tobacco employees, cigarette distribution, RICO offenses

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposal amends several sections in the *Code of Virginia* relating to cigarette delivery sales in the Commonwealth. Currently, under § 18.2-246.11, a person must file a statement containing his name, address and place of business with the Virginia Alcoholic Beverage Control Board prior to making any cigarette delivery sales; he must also file a monthly report with the Board regarding delivery sales made during the previous month. Under the proposal, the individual would also be required to submit the statement and monthly report to the Attorney General. The proposal specifies that a failure to file a particular statement or report would constitute a single violation.

The proposal creates criminal penalties for violations of § 18.2-246.11 by expanding § 18.2-246.13. Failing to file the statement required under § 18.2-246.11(A) and, thereafter, making a delivery sale would be a Class 1 misdemeanor for the first violation and a Class 6 felony for any second or subsequent violation. In addition, any person who knowingly and with the intent to defraud, mislead or deceive makes a materially false statement on the reports required by § 18.2-246.11(A) or (B) would be guilty of a Class 6 felony and each report filed that contains one or more false statements would constitute a separate offense. Under the proposal, failure to submit the monthly report would be a Class 1 misdemeanor for the first violation and a Class 6 felony for any second or subsequent offense. This statute currently prescribes only civil penalties.

The proposal adds §§ 3.2-4219 and 58.1-1008.2 to the *Code*. These proposed sections are related to materially false statements or reports by any tobacco product manufacturer, stamping agent, importer of cigarettes or employee/agent. Any person convicted of a violation of §§ 3.2-4219 or 58.1-1008.2 would be guilty of a Class 6 felony and each report or document filed containing a false statement would constitute a separate offense. The proposal amends § 2.2-511 to authorize the Attorney General to prosecute violations of §§ 3.2-4212 and the proposed 58.1-1008.2. The proposal also allows the Attorney General to assist in the prosecution of violations of § 18.2-246.6 et seq. related to cigarette delivery sales.

The proposal modifies § 3.2-4212(D) to increase the penalty for possessing or distributing cigarettes in violation of § 3.2-4207 from a Class 2 misdemeanor to a Class 1 misdemeanor if the offense involves less than 3,000 packages of cigarettes and a Class 6 felony if the violation involves 3,000 or more packages of cigarettes.

The proposal modifies § 18.2-246.15 to allow the Attorney General, with the concurrence of the Commonwealth's attorney, to assess civil penalties authorized in the article, prosecute criminal violations under § 18.2-246.13, and bring action to collect assessed penalties. Under the proposal, the ABC Board and the State Department of Taxation would be required to cooperate with the Attorney General in its enforcement efforts. Currently, under § 18.2-246.15, the Attorney General is authorized to enforce the provisions of the article and to bring an action in the appropriate court to prevent or restrain violations of the article.

Under the proposed amendment to § 18.2-513, "racketeering activity" would be expanded to include violations of §§ 3.2-4212, 18.2-246.13, and two new statutes contained in the proposal (§§ 3.2-4219 and 58.1-1008.2), all of which relate to cigarettes. Currently, racketeering activity means to commit, attempt or conspire to commit, or to solicit, coerce or intimidate another to commit two or more of the following offenses: murder, voluntary manslaughter, selected assaults, kidnapping, crimes by gangs, shooting offenses, terrorism, obstruction of justice, violations of the Waste Management Act, injuries caused by prisoners, robbery, certain arsons, burglary, grand larceny, embezzlement, several fraud offenses, money laundering, specific drug offenses, paramilitary activity, perjury, bribery, transmitting illegal money, medical assistance fraud, dog fighting, and certain cigarette tax violations.

In § 18.2-514, the proposal expands racketeering offenses by making it unlawful for any person employed by, or associated with, any enterprise to participate, directly or indirectly, in the enterprise through racketeering and by expanding the provision to include conspiracies.

By adding § 19.2-245.01, the proposal specifies that offenses involving reports or statements on cigarette sales or stamps can be prosecuted in the City of Richmond.

Title 3.2 is a recodification of Title 3.1 that was enacted on October 1, 2008.

Analysis:

There were no convictions reported in calendar year (CY) 2006 and CY2007 General District Court Automated Information System (CAIS) data for violations of § 3.1-336.10, the statute that was replaced by § 3.2-4212 in the recodification of Title 3.1.

According to fiscal year (FY) 2006 and 2007 Pre/Post-Sentence Investigation (PSI) data, there were no convictions for violations of the Virginia Racketeer Influenced and Corrupt Organization Act during this time period.

Impact of Proposed Legislation:

State adult correctional facilities. By creating new felonies, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, the number of additional felony convictions that may result from the proposal cannot be estimated; therefore, the impact of the proposal on prison bed space cannot be determined.

Local adult correctional facilities. The proposal may increase local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

Adult community corrections resources. Because the proposal could result in felony convictions and

subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected by the proposal cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal will not increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. According to the Department of Juvenile Justice (DJJ), the proposal will not affect juvenile detention facility bed space needs.

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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