



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2064

(Patron – May)

LD#: 13102836

Date: 12/14/2012

Topic: Virginia Uniform Trade Secrets Act and misappropriated trade secrets

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined, likely to be small
- **Adult Community Corrections Programs:**
Cannot be determined, likely to be small

- **Juvenile Correctional Centers:**
Cannot be determined
- **Juvenile Detention Facilities:**
Cannot be determined

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposed legislation amends §§ 59.1-336, 59.1-337, 59.1-338 and 59.1-341 of the *Code of Virginia* and adds § 59.1-338.2 to define the criminal penalty for violations. The proposal makes several changes to the statute related to injunctive relief and the effect of the Virginia Uniform Trade Secrets Act on other laws, including federal patent and copyright law. Under the proposal, anyone who misappropriates or uses a misappropriated trade secret may be convicted of a Class 1 misdemeanor for a first offense and a Class 6 felony for a second or subsequent offense.

Analysis:

There are no substantially similar statutes to the proposal, but there is a statute related to trademark infringement, § 59.1-92.12. According to fiscal year (FY) 2011 and FY2012 General District Court Automated Information System (CAIS) data, 31 offenders were convicted of a misdemeanor violation of § 59.1-92.12 for trademark infringement. The majority (64.5%) were not given an active term of incarceration after sentencing. The remaining 35.5% received a local-responsible (jail) term, with a median sentence length of one month. Circuit Court CAIS data for this time period indicate that a felony violation of § 59.1-92.12 was the primary, or most serious, offense in 16 cases. While the majority (62.5%) of these offenders did not receive an active term of incarceration to serve after sentencing, the remaining 37.5% were sentenced to a local-responsible (jail) term, with a median sentence of two months.

Impact of Proposed Legislation:

State adult correctional facilities. By adding a new felony offense relating to misappropriated trade secrets, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, the felony provision of the proposal would only be applicable after a first

conviction. The number of additional felony convictions that may result from the proposed addition cannot be determined with existing data sources. Although the magnitude of the impact on prison beds cannot be quantified, it is likely to be small.

Local adult correctional facilities. The proposal could also have an impact on local-responsible (jail) bed space needs, largely due to the proposed expansion of a new misdemeanor offense for misappropriated trade secrets. The number of additional misdemeanor convictions that may result from the proposed addition cannot be determined with existing data sources. The impact, however, is likely to be small.

Adult community corrections programs. Because the proposal could result in additional 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 cannot be determined, the potential impact on community corrections resources cannot be quantified. However, any impact is likely to be small.

Virginia's sentencing guidelines. Convictions under the proposed § 59.1-338.2 would not be covered by the sentencing guidelines as the primary (most serious) offense in a case; however, convictions for these crimes may augment the guidelines recommendation if a covered offense is the most serious at sentencing. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. The Department of Juvenile Justice reports that while this proposal could cause an increase in commitments, the impact of this proposal on bed space needs for juvenile correctional centers cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that this proposal's impact on detention center bed space cannot be determined.

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; therefore, Chapter 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

trade01_2836