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SENATE BILL NO. 752

Offered January 8, 2020

Prefiled January 8, 2020

A BILL to amend and reenact §§ 2.2-511, 8.01-216.3, and 18.2-338 of the Code of Virginia, relating to Virginia Fraud Against Taxpayers Act; illegal gambling device.

Patron—Reeves

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-511, 8.01-216.3, and 18.2-338 of the Code of Virginia are amended and reenacted 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) *violations of Article 1 of Chapter 8 (§ 18.2-325 et seq.)*, (x) with the concurrence of the local attorney for the Commonwealth, violations of the Virginia Computer Crimes Act (§ 18.2-152.1 et seq.), ~~(xi)~~ (xi) 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.), ~~(xii)~~ (xii) 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 ~~(x)~~ (xi) of this subsection, ~~(xiii)~~ (xiii) 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, ~~(xiv)~~ (xiv) 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, ~~(xv)~~ (xv) 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, ~~(xvi)~~ (xvi) 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 ~~(xvii)~~ (xvii) 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 corpus proceeding; abridge any right guaranteed by law; or create any cause of action for damages against the Commonwealth or any of its political subdivisions, the Attorney General or any of his

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59 employees or agents, any other officer, employee or agent of the Commonwealth or any of its political
60 subdivisions, or any officer of the court.

61 **§ 8.01-216.3. False claims; civil penalty.**

62 A. Any person who:

63 1. Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or
64 approval;

65 2. Knowingly makes, uses, or causes to be made or used, a false record or statement material to a
66 false or fraudulent claim;

67 3. Conspires to commit a violation of subdivision 1, 2, 4, 5, 6, or 7;

68 4. Has possession, custody, or control of property or money used, or to be used, by the
69 Commonwealth and knowingly delivers, or causes to be delivered, less than all such money or property;

70 5. Is authorized to make or deliver a document certifying receipt of property used, or to be used, by
71 the Commonwealth and, intending to defraud the Commonwealth, makes or delivers the receipt without
72 completely knowing that the information on the receipt is true;

73 6. Knowingly buys or receives as a pledge of an obligation or debt, public property from an officer
74 or employee of the Commonwealth who lawfully may not sell or pledge the property; or

75 7. Knowingly makes, uses, or causes to be made or used, a false record or statement material to an
76 obligation to pay or transmit money or property to the Commonwealth or knowingly conceals or
77 knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the
78 Commonwealth; or

79 8. *Knowingly violates § 18.2-331;*

80 shall be liable to the Commonwealth for a civil penalty of not less than \$10,957 and not more than
81 \$21,916, except that these lower and upper limits on liability shall automatically be adjusted to equal the
82 amounts allowed under the Federal False Claims Act, 31 U.S.C. § 3729 et seq., as amended, as such
83 penalties in the Federal False Claims Act are adjusted for inflation by the Federal Civil Penalties
84 Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 Note, P.L. 101-410), plus three times
85 the amount of damages sustained by the Commonwealth.

86 A person violating this section shall be liable to the Commonwealth for reasonable attorney fees and
87 costs of a civil action brought to recover any such penalties or damages. All such fees and costs shall be
88 paid to the Attorney General's Office by the defendant and shall not be included in any damages or civil
89 penalties recovered in a civil action based on a violation of this section.

90 B. If the court finds that (i) the person committing the violation of this section furnished officials of
91 the Commonwealth responsible for investigating false claims violations with all information known to
92 the person about the violation within 30 days after the date on which the defendant first obtained the
93 information; (ii) such person fully cooperated with any Commonwealth investigation of such violation;
94 (iii) at the time such person furnished the Commonwealth with the information about the violation, no
95 criminal prosecution, civil action, or administrative action had commenced with respect to such
96 violation; and (iv) the person did not have actual knowledge of the existence of an investigation into
97 such violation, the court may assess not less than two times the amount of damages that the
98 Commonwealth sustains because of the act of that person. A person violating this section shall also be
99 liable to the Commonwealth for the costs of a civil action brought to recover any such penalty or
100 damages.

101 C. For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with
102 respect to information, (i) has actual knowledge of the information; (ii) acts in deliberate ignorance of
103 the truth or falsity of the information; or (iii) acts in reckless disregard of the truth or falsity of the
104 information and require no proof of specific intent to defraud.

105 D. This section shall not apply to claims, records or statements relating to state or local taxes.

106 **§ 18.2-338. Enforcement of § 18.2-331 by Governor and Attorney General.**

107 If it shall come to the knowledge of the Governor that § 18.2-331 is not being enforced in any
108 county, city or town, the Governor ~~may~~ shall call upon the Attorney General to direct its enforcement in
109 such county, city or town, and thereupon the Attorney General ~~may~~ shall instruct the attorney for the
110 Commonwealth, sheriff and chief of police, if any, of such county, or the attorney for the
111 Commonwealth and chief of police of such city, or the attorney for the Commonwealth of the county in
112 which such town is located and the chief of police or sergeant of such town, to take such steps as may
113 be necessary to insure the enforcement of such section in such county, city or town, and if any such
114 officers, after receiving such instructions, shall thereafter fail or refuse to exercise diligence in the
115 enforcement of § 18.2-331, the Attorney General shall make report thereof in writing to the Governor
116 and to the judge of the circuit court having jurisdiction over the acts thereby prohibited, and thereupon
117 the Attorney General upon being directed so to do by the Governor, shall take such steps as he may
118 deem proper in directing the institution and prosecution of criminal proceedings, to secure the
119 enforcement of § 18.2-331.