



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 544

(Patron – Hurt)

LD#: 08-2382806

Date: 1/11/2008

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 § 2.2-511 to authorize the Attorney General to prosecute violations of two statutes (§§ 3.1-336.17 and 58.1-1008.2) added by this proposal. The two new criminal statutes 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 either § 3.1-336.17 or § 58.1-1008.2 would be guilty of a Class 6 felony. Each false statement would constitute a separate offense. The proposal also allows the Attorney General to assist in the prosecution of violations of § 18.2-246.6 et seq.

The proposal modifies § 3.1-336.10(D) to make a violation of this section 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. Currently, a violation of this section is a Class 2 misdemeanor, regardless of the amount of cigarettes.

The proposal broadens the requirements of § 18.2-246.11, relating to cigarette delivery sales. Currently, 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 sale; he must also file a monthly report with the Board regarding delivery sales made during the previous month. Under the proposal, the statement and monthly report must also be submitted to the Attorney General.

The proposal creates criminal penalties for violations of § 18.2-246.11 by expanding § 18.2-246.13. Failing to file the required statement 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 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 civil penalties only.

The proposal modifies § 18.2-246.15 to allow the Attorney General 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, § 18.2-246.15 authorizes the Attorney General 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 §§ 3.1-336.10, 18.2-246.13, and the two new statutes contained in the proposal (§ 3.1-336.17 and 58.1-1008.2), all related 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, and cigarette tax violations.

Under the proposal, directly or indirectly conducting or participating in an enterprise through racketeering activity by any person who is employed by or associated with such enterprise is prohibited. Conspiring or endeavoring to violate subsections A, B, or C of §18.2-514 would also be unlawful. The General Assembly passed the Virginia Racketeer Influenced and Corrupt Organization Act in 2004. To date, no amendments have been made to § 18.2-513 et seq.

In adding § 19.2-245.01, the proposal grants the City of Richmond the authority to prosecute violations of §§ 18.2-246.13, 18.2-514 and Articles 5 and 6 of Chapter 18 of Title 3.1. The provisions of the proposal would become effective on July 1, 2008, unless no appropriation of general funds effectuating the purposes of the proposal is included in the general appropriation act. If this were to occur, the provisions would become effective upon the appropriation of general funds.

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**Analysis:**

According to calendar year (CY) 2005 and CY2006 Local Inmate Data System (LIDS) data, no offenders were held pre- or post-trial in jail for a conviction in violation of Article 6 of Chapter 18 of Title 3.1 (relating to tobacco) or Article 2.1 of Chapter 10 of Title 58.1 (relating to cigarette manufacturing and sales).

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.

There are no criminal penalties currently defined in §§ 18.2-246.11, 18.2-246.13 and 18.2-246.15; therefore, no data are available.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By creating new felonies and authorizing the Attorney General to prosecute additional cases, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, the magnitude of the impact 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 programs.** The proposal may increase the need for state community corrections resources, but the magnitude of the impact cannot be estimated.

**Virginia's sentencing guidelines.** The guidelines do not cover violations defined in Title 3.1 or Title 58.1 as a primary (or most serious) offense. A conviction under one of these Titles, however, could augment the guidelines recommendation if the most serious offense at sentencing is a covered offense. 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.

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**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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