

## WHITE COLLAR CRIMINAL STATUTES

### I. Antitrust

A. Section 1 of the Sherman Act, 15 U.S.C. § 1, provides criminal sanctions against any person "who shall make any contract or engage in any conspiracy" in restraint of commerce.

A civil plaintiff must establish that: (1) two or more entities formed a combination or conspiracy; (2) the combination or conspiracy produces, or potentially produces, an unreasonable restraint of trade or commerce; and (3) the restrained trade or commerce is interstate in nature.

In a criminal antitrust prosecution, the government must also prove that the defendants intended to restrain commerce and acted with knowledge of the probable consequences of their actions. United States v. United States Gypsum Co., 438 U.S. 422, 444 (1978).

B. The Robinson-Patman Anti-Discrimination Act, 15 U.S.C. §§ 13 et seq., prohibits any price discrimination that does not reflect a real need to compete with a rival's lower price. While this Act provides misdemeanor criminal sanctions for a business to purposely attempt to -- or to -- eradicate competition by selling at "unreasonably low prices," by general price discrimination or by geographical price discrimination, criminal actions are rarely brought. 15 U.S.C. § 13a.

### II. Computer Crimes

Congress has responded to the rapid development of computer technology -- and attendant abuses -- by enacting numerous laws to curb wrongdoing. These statutes are designed to deter traditional crimes committed with a computer as well as other offenses against intellectual property. Prosecutors define computer crimes as "any violations of criminal law that involve a knowledge of computer technology for their perpetration, investigation or prosecution." See Gemignani, What Is Computer Crime, And Why Should We Care?, 10 U. Ark. Little Rock L.J. 55 (1987).

Among the recently enacted legislative responses to this problem are: (1) the Counterfeit Access Device and Computer Fraud and Abuse Law of 1984, 18 U.S.C. § 1030; (2) the Computer Abuse Amendments Act of 1984, amending 18 U.S.C. § 1030; (3) Copyright Infringement Prohibitions, 17 U.S.C. § 506(a); (4) the National Stolen Property Act, 18 U.S.C. § 2314; and (5) the Electronic Communications Privacy Act of 1986, 18 U.S.C. §§ 2510-2520, 2701-2710.

Computer related offenses can be charged criminally under approximately 40 different federal statutes. See United States Sentencing Commission, Computer Fraud Working Group, Report Summary: Summary of Findings (1993).

### III. Environmental Crimes

There are eight different statutes which are primarily utilized for federal criminal prosecutions of environmental offenses: (1) the Clean Air Act, 42 U.S.C. §§ 7401-7671, which imposes criminal sanctions on those who knowingly violate federal or state regulations designed to achieve EPA ambient air quality standards; (2) the Clean Water Act, 33 U.S.C. §§ 1251-1387, which is designed to control and minimize the effects of water pollution by either prohibiting or regulating the discharge of pollutants into water; (3) the Rivers and Harbors Act, 33 U.S.C. § 407, which prohibits discharges from ships or shore installations into navigable or tributary waters; (4) the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*, which regulates and controls the discharge of harmful contaminants into public water systems as well as the underground injection of contaminants into groundwater that supplies public water systems; (5) the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6992, which imposes criminal penalties on those who improperly transport, store or treat hazardous wastes; (6) the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), which established Superfund, 42 U.S.C. § 9601-9675, which imposes criminal liability for the failure to report the release of a hazardous substance; (7) the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692, which imposes criminal sanctions for the knowing violation of the Act which regulates the manufacture, processing distribution or disposal of chemicals that pose an unreasonable risk of injury to the public or environment; and (8) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136, which provides criminal penalties in connection with the manufacture, registration, transportation, sale and use of toxic pesticides.

### IV. False Claims

A. The False Claims Act of 1863, 18 U.S.C. § 287, provides criminal penalties for the presenting of a false, fictitious or fraudulent claim to a federal agency. This statute has been liberally construed, enabling the government to use it to prosecute a wide array of offenses, including fraudulent federal tax refunds, Medicare and Medicaid Fraud, Social Security Fraud, government contract irregularities and fraudulent claims for unperformed services under government contracts.

B. Congressional amendments to the False Claim Act in 1986 blurred the dividing line between criminal actions and civil false claims, by strengthening "qui tam" actions. As a result, private citizens may recover up to 25% of a government recovery where the government intervenes and up to 30% where the government does not intervene. Thus, private citizens have a powerful tool and may play an important role in prosecutorial decisions. 31 U.S.C. §§ 3729-3733. The Act provides both for treble damages and a civil penalty of \$5,000 to \$10,000 per false claim.

### V. False Statements

18 U.S.C. § 1001 provides criminal sanctions for false statements made directly or indirectly to the federal government. This section has been applied to statements, oral or written, sworn or unsworn, voluntary or required by law.

## **VI. Federal Conflict Of Interest Statutes**

A. 18 U.S.C. § 201 prohibits the bribery of, or the giving of illegal gratuities, to a public official with the intent to influence the official in carrying out an official act.

B. 18 U.S.C. § 203 criminalizes the use of a public office for private gain, whether it be by the officeholder/employee or by an outside individual attempting to influence the governmental official. The "matters" covered include a "contract, claim, controversy . . . [or] charge.

C. Ethics Reform Acts, flowing from Watergate and other public scandals, have imposed criminal sanctions for numerous other actions by public officials and private citizens making criminal use of a public office for private gain. See Note, The Congressional Ethics Dilemma: Constituent Service or Conflict of Interest?, 28 Am. Crim. L. Rev. 343 (1991).

## **VII. Food And Drug Act Violations**

The Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301-394, provides for criminal sanctions and forfeiture as part of its scheme to prevent deleterious, adulterated or misbranded articles from entering interstate commerce. Under this Act, "food" is defined to include "(1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article." 21 U.S.C. § 321(f).

## **VIII. Financial Institutions Fraud**

A. 18 U.S.C. § 1344 provides criminal sanctions for those who: (1) knowingly (2) execute or attempt to execute (3) a scheme or artifice (4) to either defraud or through false or fraudulent pretenses, representations or promises, obtain monies or other property (5) of a financial institution.

B. 18 U.S.C. § 215 makes it a crime to give, or promise to give, anything of value to an official, director, employee or agent of a financial institution with the intent to influence any transaction of the institution. This statute also makes it a crime for any such person to receive such a thing of value.

C. The Bank Secrecy Act, 31 U.S.C. §§ 5311-5326, authorizes the Secretary of the Treasury to promulgate regulations regarding reporting and record keeping for domestic financial institutions for transactions involving payment, receipt or transfer of U.S. currency, and imposes criminal sanctions for violations. Under this statute, the Treasury Secretary has promulgated regulations establishing the Currency Transaction Report ("CTR"), 31 C.F.R. §

103.22(a)(1), requiring each financial institution to report all currency transactions in excess of \$10,000.

#### A. **Foreign Corrupt Practices Act**

The Foreign Corrupt Practices Act was enacted in 1977 in response to numerous international corporate bribery scandals. It addresses foreign corrupt payments in a two-pronged manner: (1) by setting up corporate accounting provisions designed to serve as indirect internal deterrents; and (2) by establishing criminal sanctions prohibiting certain types of payments to foreign officials, foreign political parties or their officers, or to intermediaries who might make such payments. See Project, Fifth Survey of White Collar Crime, 26 Am. Crim. L. Rev. 855 (1989).

#### I. **Health Care Fraud**

The Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, created five new health care fraud crimes and expanded existing money laundering, asset forfeiture and fraud injunction statutes to cover "federal health care offenses." These new crimes, which mirror existing white collar offenses such as mail and wire fraud, embezzlement, false statements and obstruction of justice, provide for jail terms of up to 10 years.

- A. 18 U.S.C. §669: "Whoever . . . embezzles, steals . . . or intentionally misapplies any of the moneys, funds . . . or other assets of a health care benefit program" shall be sentenced up to 10 years in prison and fined up to \$250,000.
- B. 18 U.S.C. §982: "The court, in imposing sentence on a person convicted of a Federal health care offense, shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from the gross proceeds traceable to the commission of the offense."
- C. 18 U.S.C. §1035: "Whoever, in any matter involving a health care benefit program, knowingly and willfully . . . makes any materially false . . . statements . . . in connection with the delivery of or payment for health care benefits, items or services" shall be sentenced up to 5 years in prison and fined up to \$250,000.
- D. 18 U.S.C. §1347: "Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice (1) to defraud any health care benefit program; or (2) to obtain, by means of false or fraudulent pretenses . . . any of the money of . . . any health care benefit program" shall be sentenced up to 10 years in prison and fined up to \$250,000.
- E. 18 U.S.C. §1518: Obstruction of criminal investigations of health care offenses is punishable by up to 5 years in prison and a fine of as much as \$250,000.

- F. 18 U.S.C. §1956: Money laundering statutes apply to the "laundering" of funds derived from the proceeds from health care offenses, allowing for prison sentences of up to 20 years and fines up to \$500,000 or twice the value of the property involved.
- G. 18 U.S.C. §3486: Administrative demands are authorized.

The federal False Claims Act, 31 U.S.C. § 3729 et seq., and its qui tam or "whistleblower" provisions, which reward private citizens who help the government discover fraudulent claims, are also applicable to health care providers who submit Medicare or other federal funds claims.

## II. **Intellectual Property**

A. The Economic Espionage Act of 1996, 18 U.S.C. §§ 1831-39, makes the misappropriation of a company's trade secrets, including the unauthorized downloading or uploading of trade secrets by a computer, a federal crime punishable by up to 10 years imprisonment and fines up to \$5 million for organizations. If the trade secrets are taken to benefit a "foreign government, foreign instrumentality, or foreign agent," the Act provides penalties of up to 15 years imprisonment and fines up to \$10 million for organizations.

B. The National Stolen Property Act, 18 U.S.C. § 2314, provides criminal sanctions for anyone who transports in interstate or foreign commerce "any goods, wares, merchandise, securities or money, of the value of \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud."

C. The Trade Secrets Act, 18 U.S.C. § 1905, prohibits the disclosure of confidential information by public officers and public employees and mandates dismissal from employment for violations.

D. The Mail Fraud and Wire Fraud Statutes, 18 U.S.C. §§ 1341 and 1343, discussed separately, are often utilized to criminally prosecute the theft of intellectual property.

E. The Trademark Counterfeiting Act, 18 U.S.C. § 2320, criminalizes the international trafficking of counterfeit goods or services, including those goods which have a mark identical with or substantially undistinguishable from a registered trademark.

F. The Copyright Act, 17 U.S.C. § 506(a), provides criminal penalties for those who willfully infringe a copyright for commercial advantage or private financial gain. This Act implies to sound recordings, motion pictures, audiovisual works and computer software.

## III. **Mail And Wire Fraud**

The federal mail and wire fraud statutes are the "prosecutor's darling." They criminalize "the full range of consumer frauds, stock frauds, land frauds, bank frauds, insurance

frauds, and commodity frauds [as well as] blackmail, counterfeiting, election fraud and bribery." Rakoff, The Federal Mail Fraud Statute (Part 1), 18 Duq. L. Rev. 771 (1980). These statutes are frequently utilized to bring federal prosecutions for what would otherwise be state court offenses.

The Mail Fraud Statute, 18 U.S.C. § 1341, provides criminal sanctions for those who: (1) engage in a scheme or artifice to defraud; (2) with an intent to defraud; (3) using the mails to further the fraudulent scheme.

The Wire Fraud Statute, 18 U.S.C. § 1343, contains nearly identical language as the Mail Fraud Statute and prohibits fraudulent schemes that make use of interstate television, radio or wire communications.

#### **IV. Money Laundering**

The Money Laundering Control Act of 1986, 18 U.S.C. §§ 1956-1957, was enacted to deter organized crime and narcotics traffickers from "money laundering," defined as the process by which one conceals the existence, illegal source, or illegal application of income, and disguises that income to make it appear legitimate.

This Act provides criminal sanctions for anyone who conducts a monetary transaction knowing, or with reason to know, that the funds involved were derived from unlawful activity.

While this Act was aimed at "the lifeblood of organized crime," it has been utilized by prosecutors against numerous corporations and otherwise legitimate businesses because it enables prosecutors to reach proceeds of criminal conduct, such as tax offenses.

#### **V. Obstruction Of Justice**

The Obstruction of Justice and Perjury statutes, 18 U.S.C. §§ 1501 *et seq.*, are popular statutes for federal prosecutors. These laws, which are designed to protect the integrity of judicial proceedings -- before grand juries, federal agencies and Congress -- are often utilized to pursue criminal investigations, with otherwise marginal evidence of substantive offenses, because of (a) concealment, alteration or destruction of documents; or (b) encouraging or rendering of false testimony.

#### **VI. RICO Offenses**

Over the past decade, federal prosecutors have turned to the "RICO" (Racketeer Influenced and Corrupt Organizations Act of 1970) statute, 18 U.S.C. §§ 1961-1968, as a tool in prosecuting legitimate businesses and their officers. While enacted in 1970 as a "frontal attack" on organized crime, prosecutors have taken advantage of the Act's specific statement that it should be interpreted "liberally . . . to effectuate its remedial purposes" to justify its use in other contexts.

The Act prohibits "any person" from: (a) using income received from a pattern of racketeering activity or through collection of an unlawful debt to acquire an interest in an

enterprise affecting interstate commerce; (b) acquiring or maintaining through a pattern of racketeering activity or through collection of an unlawful debt an interest in an enterprise affecting interstate commerce; (c) conducting or participating in the conduct of, through a pattern of racketeering activity or through collection of an unlawful debt, the affairs of an enterprise affecting interstate commerce; or (d) conspiring to participate in any of these activities.

Federal prosecutors utilize the RICO statute as a powerful weapon to prosecute offenses such as mail and wire fraud, bankruptcy fraud, and securities fraud. Prosecutors also take advantage of the statute's provisions authorizing courts to enter restraining orders prior to conviction to prevent the transfer of potentially forfeitable property.

## VII. **Securities Fraud**

Both the Securities Act of 1933, 15 U.S.C. §§ 77a et seq., and the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq., provide for criminal penalties for various types of conduct. See, e.g., 15 U.S.C. § 77e(a) (sale of unregistered securities); 15 U.S.C. § 77q(b) (unlawful use of interstate commerce for purpose of offering securities for sale); 15 U.S.C. § 78j(a) (unlawful short selling of securities); 15 U.S.C. §§ 78g(c), 78(h), 78o, 78q(a), (unlawful conduct of broker-dealer); 15 U.S.C. § 78n(a) (unlawful proxy solicitation); 15 U.S.C. § 78n(e) (false practices in connection with tender offers); 15 U.S.C. § 78p(a) (inside ownership).

The most popular statute utilized by prosecutors in criminal prosecutions of securities fraud cases is Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder, provide for criminal sanctions if there is: (1) substantive fraud, including material misrepresentations or omissions, a scheme or artifice to defraud, or a fraudulent act, practice or course of business; (2) in connection with the purchase or sale of a security or in the offer or sale of a security; and (3) the use of interstate commerce or the mails.

## VIII. **Tax Evasion**

A. 26 U.S.C. § 7201 is the "capstone of the system of sanctions" under the tax laws. Sansone v. United States, 380 U.S. 343, 350 (1965). This section provides criminal sanctions for one "who wilfully attempts in any manner to evade or defeat any tax [deficiency]."

B. 26 U.S.C. § 7202 criminalizes both the willful failure to collect taxes and the willful failure to truthfully account for and pay taxes. It is perhaps the least utilized of criminal tax statutes.

C. 26 U.S.C. § 7203 provides a misdemeanor offense for persons who have willfully failed to file their returns, to supply information or to pay their taxes.

D. 26 U.S.C. § 7206(1) provides criminal sanctions for willfully subscribing to a false tax return, statement or other document.

E. 26 U.S.C. § 7206(2) provides criminal sanctions for willfully aiding and assisting in the preparation of a false tax return, affidavit or other document.

## **IX. Civil Remedies**

18 U.S.C. § 1345 provides for a civil injunction prohibiting the withdrawing, transferring or disposing of property obtained as a result of various offenses of Title 18 as well as conspiracies to defraud (and false claims and statements to) the United States (or any agency thereof) and banking violations.