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SENATE BILL NO. 1067

Offered January 12, 2011

Prefiled January 11, 2011

A BILL to amend and reenact §§ 19.2-8 and 54.1-3904 of the Code of Virginia, relating to unauthorized practice of law; statute of limitations on prosecution; civil penalty.

Patrons—Edwards; Delegate: Surovell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 19.2-8 and 54.1-3904 of the Code of Virginia are amended and reenacted as follows:**

§ 19.2-8. Limitation of prosecutions.

A prosecution for a misdemeanor, or any pecuniary fine, forfeiture, penalty or amercement, shall be commenced within one year next after there was cause therefor, except that a prosecution for petit larceny may be commenced within five years, and for an attempt to produce abortion, within two years after commission of the offense.

A prosecution for any misdemeanor violation of § 54.1-3904 shall be commenced within two years of the discovery of the offense by the complainant.

A prosecution for violation of laws governing the placement of children for adoption without a license pursuant to § 63.2-1701 shall be commenced within one year from the date of the filing of the petition for adoption.

A prosecution for making a false statement or representation of a material fact knowing it to be false or knowingly failing to disclose a material fact, to obtain or increase any benefit or other payment under the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) shall be commenced within three years next after the commission of the offense.

A prosecution for any violation of § 10.1-1320, 62.1-44.32 (b), 62.1-194.1, or Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of Title 62.1 that involves the discharge, dumping or emission of any toxic substance as defined in § 32.1-239 shall be commenced within three years next after the commission of the offense.

Prosecution of Building Code violations under § 36-106 shall commence within one year of discovery of the offense by the owner or by the building official; provided that such discovery occurs within two years of the date of initial occupancy or use after construction of the building or structure, or the issuance of a certificate of use and occupancy for the building or structure, whichever is later. However, prosecutions under § 36-106 relating to the maintenance of existing buildings or structures as contained in the Uniform Statewide Building Code shall commence within one year of the discovery of the offense.

Prosecution of any misdemeanor violation of § 54.1-111 shall commence within one year of the discovery of the offense by the complainant, but in no case later than five years from occurrence of the offense.

Prosecution of nonfelonious offenses which constitute malfeasance in office shall commence within two years next after the commission of the offense.

Prosecution of any violation of § 55-79.87, 55-79.88, 55-79.89, 55-79.90, 55-79.93, 55-79.94, 55-79.95, 55-79.103, or any rule adopted under or order issued pursuant to § 55-79.98, shall commence within three years next after the commission of the offense.

Prosecution of illegal sales or purchases of wild birds, wild animals and freshwater fish under § 29.1-553 shall commence within three years after commission of the offense.

Prosecution of violations under Title 58.1 for offenses involving false or fraudulent statements, documents or returns, or for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof, or for the offense of willfully failing to pay any tax, or willfully failing to make any return at the time or times required by law or regulations shall commence within three years next after the commission of the offense, unless a longer period is otherwise prescribed.

Prosecution of violations of subsection A or B of § 3.2-6570 shall commence within five years of the commission of the offense, except violations regarding agricultural animals shall commence within one year of the commission of the offense.

A prosecution for a violation of § 18.2-386.1 shall be commenced within five years of the commission of the offense.

A prosecution for any violation of the Campaign Finance Disclosure Act, Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2, shall commence within one year of the discovery of the offense but in no case more

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59 than three years after the date of the commission of the offense.

60 A prosecution of a crime that is punishable as a misdemeanor pursuant to the Virginia Computer
61 Crimes Act (§ 18.2-152.1 et seq.) or pursuant to § 18.2-186.3 for identity theft shall be commenced
62 before the earlier of (i) five years after the commission of the last act in the course of conduct
63 constituting a violation of the article or (ii) one year after the existence of the illegal act and the identity
64 of the offender are discovered by the Commonwealth, by the owner, or by anyone else who is damaged
65 by such violation.

66 Nothing in this section shall be construed to apply to any person fleeing from justice or concealing
67 himself within or without the Commonwealth to avoid arrest or be construed to limit the time within
68 which any prosecution may be commenced for desertion of a spouse or child or for neglect or refusal or
69 failure to provide for the support and maintenance of a spouse or child.

70 § 54.1-3904. Penalty for practicing without authority.

71 A. Any person who practices law without being authorized or licensed shall be guilty of a Class 1
72 misdemeanor. *Any person convicted of practicing law without being authorized or licensed may be*
73 *ordered by the court to pay restitution.*

74 B. *In addition to the criminal penalties provided for in subsection A, a civil proceeding may be*
75 *instituted pursuant to § 8.01-637 against any person, partnership, corporation, or any other entity*
76 *engaging in the unauthorized practice of law in which the complainant may recover a civil penalty of*
77 *\$5,000 per violation or actual damages, whichever is greater. The court shall award the costs of suit to*
78 *the prevailing party, including reasonable attorney fees. If the court finds that the defendant committed*
79 *actual fraud on another person in connection with the unauthorized practice of law, the court may*
80 *award punitive damages. Nothing herein shall prevent a complainant from seeking other available legal*
81 *remedies.*

82 C. A collection agency may refer debts to an attorney for collection with the creditor's approval of
83 the referral and the fee arrangement and shall not be deemed to be engaged in the unauthorized practice
84 of law. An attorney is permitted by the creditor's authorization to enter into such representation
85 agreements.