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SENATE BILL NO. 840

Offered January 9, 2013

Prefiled January 2, 2013

A *BILL to amend the Code of Virginia by adding in Chapter 1 of Title 19.2 a section numbered 19.2-12, relating to vacation of criminal convictions upon occurrence of fraud upon the court.*

Patrons—Locke, Alexander and Stuart

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 1 of Title 19.2 a section numbered 19.2-10.3 as follows:

§ 19.2-10.3. Court may vacate criminal conviction for fraud upon the court.

Notwithstanding any provision of the code or any rule of court to the contrary, a person convicted of a felony in a circuit court or a juvenile found delinquent of an offense that would be a felony if committed by an adult may at any time after his conviction or adjudication petition the proper court in the jurisdiction where the conviction was obtained for an order vacating the conviction or adjudication on the basis of material fraud upon the court or perjured testimony. The petition shall allege findings of fact and conclusions of law that form the basis of a finding of a material fraud upon the court or perjured testimony. Following notice to the Commonwealth and upon hearing on the petition, the circuit court may vacate the judgment of the criminal conviction or adjudication of the person if it finds by clear and convincing evidence that the conviction or adjudication was obtained by the commission of a material fraud upon the court or perjured testimony, either or both.

INTRODUCED

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