

20104102D

HOUSE BILL NO. 1180

Offered January 8, 2020

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A BILL to amend and reenact §§ 18.2-11, 33.2-802, 45.1-257, 62.1-44.15:48, as it is currently effective, 62.1-44.32, as it is currently effective and as it may become effective, 62.1-44.34:20, and 62.1-270 of the Code of Virginia, relating to misdemeanor; maximum term of confinement.

Patron—Lopez

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-11, 33.2-802, 45.1-257, 62.1-44.15:48, as it is currently effective, 62.1-44.32, as it is currently effective and as it may become effective, 62.1-44.34:20, and 62.1-270 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-11. Punishment for conviction of misdemeanor.

The authorized punishments for conviction of a misdemeanor are:

(a) For Class 1 misdemeanors, confinement in jail for not more than ~~twelve months~~ 364 days and a fine of not more than \$2,500, either or both.

(b) For Class 2 misdemeanors, confinement in jail for not more than six months and a fine of not more than \$1,000, either or both.

(c) For Class 3 misdemeanors, a fine of not more than \$500.

(d) For Class 4 misdemeanors, a fine of not more than \$250.

For a misdemeanor offense prohibiting proximity to children as described in subsection A of § 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in subsection B of that section in addition to any other penalty provided by law.

§ 33.2-802. Dumping trash; penalty.

A. It shall be unlawful for any person to dump or otherwise dispose of trash, garbage, refuse, litter, a companion animal as defined in § 3.2-6500 for the purpose of disposal, or other unsightly matter on public property, including a public highway, right-of-way, or property adjacent to such highway or right-of-way, or on private property without the written consent of the owner or his agent.

B. When any person is arrested for a violation of this section, and the matter alleged to have been illegally dumped or disposed of has been ejected from a motor vehicle or transported to the disposal site in a motor vehicle, the arresting officer may comply with the provisions of § 46.2-936 in making an arrest.

When a violation of the provisions of this section has been observed by any person, and the matter illegally dumped or disposed of has been ejected or removed from a motor vehicle, the owner or operator of the motor vehicle shall be presumed to be the person ejecting or disposing of the matter. However, such presumption shall be rebuttable by competent evidence.

C. Any person convicted of a violation of this section is guilty of a misdemeanor punishable by confinement in jail for not more than ~~12 months~~ 364 days and a fine of not less than \$250 or more than \$2,500, either or both. In lieu of the imposition of confinement in jail, the court may order the defendant to perform a mandatory minimum of 10 hours of community service in litter abatement activities.

D. The governing bodies of localities may adopt ordinances not in conflict with the provisions of this section and may repeal or amend such ordinances.

E. The provisions of this section shall not apply to the lawful disposal of such matter in landfills.

§ 45.1-257. Impeding, etc., Director or agents a misdemeanor.

It shall be a misdemeanor, punishable by a fine of not more than \$5,000 or by confinement in jail for not more than ~~one year~~ 364 days, or both, for any person, except as permitted by law, to willfully resist, prevent, impede, or interfere with the Director or any of his agents in the performance of duties pursuant to this chapter.

§ 62.1-44.15:48. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Penalties, injunctions, and other legal actions.

A. Any person who violates any provision of this article or of any regulation, ordinance, or standard and specification adopted or approved hereunder, including those adopted pursuant to the conditions of an MS4 permit, or who fails, neglects, or refuses to comply with any order of a VSMP authority authorized to enforce this article, the Department, the Board, or a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court.

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59 Each day of violation of each requirement shall constitute a separate offense. The Board shall adopt a
60 regulation establishing a schedule of civil penalties to be utilized by the VSMP authority in enforcing
61 the provisions of this article. The Board, Department, or VSMP authority may issue a summons for
62 collection of the civil penalty and the action may be prosecuted in the appropriate court. Any civil
63 penalties assessed by a court as a result of a summons issued by a locality as an approved VSMP
64 authority shall be paid into the treasury of the locality wherein the land lies, except where the violator is
65 the locality itself, or its agent. When the penalties are assessed by the court as a result of a summons
66 issued by the Board or Department, or where the violator is the locality itself, or its agent, the court
67 shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the
68 Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. Such civil penalties paid
69 into the treasury of the locality in which the violation occurred are to be used for the purpose of
70 minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating
71 environmental pollution therein in such manner as the court may, by order, direct.

72 B. Any person who willfully or negligently violates any provision of this article, any regulation or
73 order of the Board, any order of a VSMP authority authorized to enforce this article or the Department,
74 any ordinance of any locality approved as a VSMP authority, any condition of a permit or state permit,
75 or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more
76 than ~~12 months~~ 364 days and a fine of not less than \$2,500 nor more than \$32,500, either or both. Any
77 person who knowingly violates any provision of this article, any regulation or order of the Board, any
78 order of the VSMP authority or the Department, any ordinance of any locality approved as a VSMP
79 authority, any condition of a permit or state permit, or any order of a court issued as herein provided, or
80 who knowingly makes any false statement in any form required to be submitted under this article or
81 knowingly renders inaccurate any monitoring device or method required to be maintained under this
82 article, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor
83 more than three years, or in the discretion of the jury or the court trying the case without a jury,
84 confinement in jail for not more than 12 months and a fine of not less than \$5,000 nor more than
85 \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation
86 under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each
87 requirement shall constitute a separate offense.

88 C. Any person who knowingly violates any provision of this article, and who knows at that time that
89 he thereby places another person in imminent danger of death or serious bodily harm, shall, upon
90 conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor
91 more than 15 years and a fine of not more than \$250,000, either or both. A defendant that is not an
92 individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not
93 exceeding the greater of \$1 million or an amount that is three times the economic benefit realized by the
94 defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine
95 and imprisonment for any subsequent conviction of the same person under this subsection.

96 D. Violation of any provision of this article may also include the following sanctions:

97 1. The Board, Department, or the VSMP authority, where authorized to enforce this article, may
98 apply to the appropriate court in any jurisdiction wherein the land lies to enjoin a violation or a
99 threatened violation of the provisions of this article or of the local ordinance without the necessity of
100 showing that an adequate remedy at law does not exist.

101 2. With the consent of any person who has violated or failed, neglected, or refused to obey any
102 ordinance, any condition of a permit or state permit, any regulation or order of the Board, any order of
103 the VSMP authority or the Department, or any provision of this article, the Board, Department, or
104 VSMP authority may provide, in an order issued against such person, for the payment of civil charges
105 for violations in specific sums, not to exceed the limit specified in this section. Such civil charges shall
106 be instead of any appropriate civil penalty that could be imposed under this section. Any civil charges
107 collected shall be paid to the locality or state treasury pursuant to subsection A.

108 **§ 62.1-44.32. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts**
109 **2017, c. 345) Penalties.**

110 (a) Except as otherwise provided in this chapter, any person who violates any provision of this
111 chapter, or who fails, neglects, or refuses to comply with any order of the Board, or order of a court,
112 issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation
113 within the discretion of the court. Each day of violation of each requirement shall constitute a separate
114 offense. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer
115 into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1,
116 excluding penalties assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et
117 seq.) of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition
118 of approval relating to or issued under those articles.

119 Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the
120 treasury of the county, city, or town in which the violation occurred, to be used for the purpose of

abating environmental pollution therein in such manner as the court may, by order, direct, except that where the owner in violation is such county, city or town itself, or its agent, the court shall direct such penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties assessed for violations of Article 9 or 10 of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.

In the event that a county, city, or town, or its agent, is the owner, such county, city, or town, or its agent, may initiate a civil action against any user or users of a waste water treatment facility to recover that portion of any civil penalty imposed against the owner proximately resulting from the act or acts of such user or users in violation of any applicable federal, state, or local requirements.

(b) Except as otherwise provided in this chapter, any person who willfully or negligently violates any provision of this chapter, any regulation or order of the Board, any condition of a certificate or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than ~~12 months~~ 364 days and a fine of not less than \$2,500 nor more than \$32,500, either or both. Any person who knowingly violates any provision of this chapter, any regulation or order of the Board, any condition of a certificate or any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this chapter or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.

(c) Except as otherwise provided in this chapter, any person who knowingly violates any provision of this chapter, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than 15 years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of \$1 million or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

(d) Criminal prosecution under this section shall be commenced within three years of discovery of the offense, notwithstanding the limitations provided in any other statute.

§ 62.1-44.32. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Penalties.

(a) Except as otherwise provided in this chapter, any person who violates any provision of this chapter, or who fails, neglects, or refuses to comply with any regulation, certificate, land-disturbance approval, or order of the Board, or order of a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$ 32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of Title 10.1, excluding penalties assessed for violations of Article 2.3 (§ 62.1-44.15:24 et seq.), 2.4 (§ 62.1-44.15:51 et seq.), 2.5 (§ 62.1-44.15:67 et seq.), 9 (§ 62.1-44.34:8 et seq.), or 10 (§ 62.1-44.34:10 et seq.) of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.

Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred, to be used for the purpose of abating environmental pollution therein in such manner as the court may, by order, direct, except that where the owner in violation is such county, city, or town itself, or its agent, the court shall direct such penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties assessed for violations of Article 2.3, 2.4, 2.5, 9, or 10 of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.

In the event that a county, city, or town, or its agent, is the owner, such county, city, or town, or its agent, may initiate a civil action against any user or users of a waste water treatment facility to recover that portion of any civil penalty imposed against the owner proximately resulting from the act or acts of such user or users in violation of any applicable federal, state, or local requirements.

182 (b) Except as otherwise provided in this chapter, any person who willfully or negligently violates (1)
183 any provision of this chapter, any regulation or order of the Board, or any condition of a certificate or
184 land-disturbance approval of the Board, (2) any land-disturbance approval, ordinance, or order of a
185 locality serving as a Virginia Erosion and Stormwater Management Program authority, or (3) any order
186 of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12
187 months 364 days and a fine of not less than \$ 2,500 nor more than \$ 32,500, either or both. Any person
188 who knowingly violates (A) any provision of this chapter, any regulation or order of the Board, or any
189 condition of a certificate or land-disturbance approval of the Board, (B) any land-disturbance approval,
190 ordinance, or order of a locality serving as a Virginia Erosion and Stormwater Management Program
191 authority, or (C) any order of a court issued as herein provided, or who knowingly makes any false
192 statement in any form required to be submitted under this chapter or knowingly renders inaccurate any
193 monitoring device or method required to be maintained under this chapter, shall be guilty of a felony
194 punishable by a term of imprisonment of not less than one year nor more than three years, or in the
195 discretion of the jury or the court trying the case without a jury, confinement in jail for not more than
196 12 months and a fine of not less than \$ 5,000 nor more than \$ 50,000 for each violation. Any defendant
197 that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay
198 a fine of not less than \$ 10,000. Each day of violation of each requirement shall constitute a separate
199 offense.

200 (c) Except as otherwise provided in this chapter, any person who knowingly violates any provision of
201 this chapter, and who knows at that time that he thereby places another person in imminent danger of
202 death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of
203 imprisonment of not less than two years nor more than 15 years and a fine of not more than \$ 250,000,
204 either or both. A defendant that is not an individual shall, upon conviction of a violation under this
205 subsection, be sentenced to pay a fine not exceeding the greater of \$ 1 million or an amount that is
206 three times the economic benefit realized by the defendant as a result of the offense. The maximum
207 penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of
208 the same person under this subsection.

209 (d) Criminal prosecution under this section shall be commenced within three years of discovery of
210 the offense, notwithstanding the limitations provided in any other statute.

211 **§ 62.1-44.34:20. Enforcement and penalties.**

212 A. Upon a finding of a violation of this article or a regulation or term or condition of approval
213 issued pursuant to this article, the Board is authorized to issue a special order requiring any person to
214 cease and desist from causing or permitting such violation or requiring any person to comply with any
215 such provision, regulation or term or condition of approval. Such special orders shall be issued only
216 after notice and an opportunity for hearing except that, if the Board finds that any discharge in violation
217 of this article poses a serious threat to (i) the public health, safety or welfare or the health of animals,
218 fish, botanic or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial,
219 agricultural or other reasonable uses, the Board may issue, without advance notice or hearing, an
220 emergency special order requiring the operator of any facility, vehicle or vessel to cease such discharge
221 immediately, to implement any applicable contingency plan and to effect containment and cleanup. Such
222 emergency special order may also require the operator of a facility to modify or cease regular operation
223 of the facility, or any portion thereof, until the Board determines that continuing regular operation of the
224 facility, or such portion thereof, will not pose a substantial threat of additional or continued discharges.
225 The Board shall affirm, modify, amend or cancel any such emergency order after providing notice and
226 opportunity for hearing to the operator charged with the violation. The notice of the hearing and the
227 emergency order shall be issued at the same time. If an operator who has been issued such a special
228 order or an emergency special order is not complying with the terms thereof, the Board may proceed in
229 accordance with subsection B of this section, and where the order is based on a finding of an imminent
230 and substantial danger, the court shall issue an injunction compelling compliance with the emergency
231 special order pending a hearing by the Board. If an emergency special order requires modification or
232 cessation of operations, the Board shall provide an opportunity for a hearing within 48 hours of the
233 issuance of the injunction.

234 B. In the event of a violation of this article or a regulation, administrative or judicial order, or term
235 or condition of approval issued under this article, or in the event of failure to comply with a special
236 order issued by the Board pursuant to this section, the Board is authorized to proceed by civil action to
237 obtain an injunction of such violation, to obtain such affirmative equitable relief as is appropriate and to
238 recover all costs, damages and civil penalties resulting from such violation or failure to comply. The
239 Board shall be entitled to an award of reasonable attorneys' fees and costs in any action in which it is a
240 prevailing party.

241 C. Any person who violates or causes or permits to be violated a provision of this article, or a
242 regulation, administrative or judicial order, or term or condition of approval issued under this article,
243 shall be subject to a civil penalty for each such violation as follows:

1. For failing to obtain approval of an oil discharge contingency plan as required by § 62.1-44.34:15, not less than \$1,000 nor more than \$50,000 for the initial violation, and \$5,000 per day for each day of violation thereafter;

2. For failing to maintain evidence of financial responsibility as required by § 62.1-44.34:16, not less than \$1,000 nor more than \$100,000 for the initial violation, and \$5,000 per day for each day of violation thereafter;

3. For discharging or causing or permitting a discharge of oil into or upon state waters, or owning or operating any facility, vessel or vehicle from which such discharge originates in violation of § 62.1-44.34:18, up to \$100 per gallon of oil discharged;

4. For failing to cooperate in containment and cleanup of a discharge as required by § 62.1-44.34:18 or for failing to report a discharge as required by § 62.1-44.34:19, not less than \$1,000 nor more than \$50,000 for the initial violation, and \$10,000 for each day of violation thereafter; and

5. For violating or causing or permitting to be violated any other provision of this article, or a regulation, administrative or judicial order, or term or condition of approval issued under this article, up to \$32,500 for each violation. Each day of violation of each requirement shall constitute a separate offense.

D. Civil penalties may be assessed under this article either by a court in an action brought by the Board pursuant to this section, as specified in § 62.1-44.15, or with the consent of the person charged, in a special order issued by the Board. All penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Underground Petroleum Storage Tank Fund as established in § 62.1-44.34:11. In determining the amount of any penalty, consideration shall be given to the willfulness of the violation, any history of noncompliance, the actions of the person in reporting, containing and cleaning up any discharge or threat of discharge, the damage or injury to state waters or the impairment of their beneficial use, the cost of containment and cleanup, the nature and degree of injury to or interference with general health, welfare and property, and the available technology for preventing, containing, reducing or eliminating the discharge.

E. Any person who knowingly violates, or causes or permits to be violated, a provision of this article, or a regulation, administrative or judicial order, or term or condition of approval issued under this article shall be guilty of a misdemeanor punishable by confinement in jail for not more than ~~12 months~~ 364 days and a fine of not more than \$100,000, either or both. Any person who knowingly or willfully makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by this article or by administrative or judicial order issued under this article shall be guilty of a felony punishable by a term of imprisonment of not less than one nor more than three years and a fine of not more than \$100,000, either or both. In the case of a discharge of oil into or upon state waters:

1. Any person who negligently discharges or negligently causes or permits such discharge shall be guilty of a misdemeanor punishable by confinement in jail for not more than ~~12 months~~ 364 days and a fine of not more than \$50,000, either or both.

2. Any person who knowingly and willfully discharges or knowingly and willfully causes or permits such discharge shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than 10 years and a fine of not more than \$100,000, either or both.

F. Each day of violation of each requirement shall constitute a separate offense. In the event the violation of this article follows a prior felony conviction under subdivision E 2 of this section, such violation shall constitute a felony and shall be punishable by a term of imprisonment of not less than two years nor more than 10 years and a fine of not more than \$200,000, either or both.

G. Upon conviction for a violation of any provision of this article, or a regulation, administrative or judicial order, or term or condition of approval issued under this article, a defendant who is not an individual shall be sentenced to pay a fine not exceeding the greater of:

1. \$1 million; or

2. An amount that is three times the economic benefit, if any, realized by the defendant as a result of the offense.

H. Any tank vessel entering upon state waters which fails to provide evidence of financial responsibility required by § 62.1-44.34:16, and any vessel from which oil is discharged into or upon state waters, may be detained and held as security for payment to the Commonwealth of any damages or penalties assessed under this section. Such damages and penalties shall constitute a lien on the vessel and the lien shall secure all costs of containment and cleanup, damages, fines and penalties, as the case may be, for which the operator may be liable. The vessel shall be released upon posting of a bond with surety in the maximum amount of such damages or penalties.

§ 62.1-270. Penalties.

A. Any person who violates any provision of this chapter, or who fails, neglects or refuses to comply with any order of the Board pertaining to ground water, or order of a court, issued as herein provided,

305 shall be subject to a civil penalty not to exceed \$25,000 for each violation within the discretion of the
306 court. Each day of violation of each requirement shall constitute a separate offense.

307 Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the
308 treasury of the county, city, or town in which the violation occurred to be used for the purpose of
309 abating environmental pollution therein in such manner as the court may, by order, direct, except that
310 where the person in violation is such county, city or town itself, or its agent, the court shall direct such
311 penalty to be paid to the State Treasurer for deposit into the Virginia Environmental Emergency
312 Response Fund pursuant to Chapter 25 of Title 10.1.

313 With the consent of any person in violation of this chapter, the Board may provide, in an order
314 issued by the Board against the person, for the payment of civil charges. These charges shall be in lieu
315 of the civil penalties referred to above. Such civil charges shall be deposited by the State Treasurer into
316 the Virginia Environmental Emergency Response Fund.

317 B. Any person willfully or negligently violating any provision of this chapter, any regulation or order
318 of the Board pertaining to ground water, any condition of a ground water withdrawal permit or any
319 order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than
320 ~~twelve months~~ 364 days and a fine of not less than \$2,500 nor more than \$25,000, either or both. Any
321 person who knowingly violates any provision of this chapter, any regulation or order of the Board
322 pertaining to ground water, any condition of a ground water withdrawal permit or any order of a court
323 issued as herein provided, or who knowingly makes any false statement in any form required to be
324 submitted under this chapter shall be guilty of a felony punishable by a term of imprisonment of not
325 less than one year nor more than three years, or in the discretion of the jury or the court trying the case
326 without a jury, confinement in jail for not more than twelve months and a fine of not less than \$5,000
327 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction
328 of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of
329 violation of each requirement shall constitute a separate offense.

330 C. Any person who knowingly violates any provision of this chapter, and who knows at that time
331 that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon
332 conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor
333 more than fifteen years and a fine of not more than \$250,000, either or both. A defendant that is not an
334 individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not
335 exceeding the greater of one million dollars or an amount that is three times the economic benefit
336 realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect
337 to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

338 D. Criminal prosecution under this section shall be commenced within three years of discovery of the
339 offense, notwithstanding the limitations provided in any other statute.